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FEDERAL/PROVINCIAL TERRITORIAL WORKING GROUP ON PROSTITUTION

Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities

December 1998

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EXECUTIVE SUMMARY

This report and its recommendations reflect the views of the officials who took part in the Working Group. The views expressed are not necessarily those of the federal, provincial and territorial ministers or governments.

In recent years, prostitution-related activities have become an increasingly serious concern for many communities across Canada. Two issues in particular have gained a high public profile: youth involved in prostitution[1] and the harm associated with street prostitution.[2] The problem of violence against prostitutes is also raised frequently as it is related to both of these issues.

A Working Group on Prostitution was established in 1992 by the Federal, Provincial and Territorial Deputy Ministers Responsible for Justice with a mandate to review legislation, policy and practices concerning prostitution-related activities and asked to bring forward recommendations. The jurisdictional composition of the Working Group has remained constant since 1992; however, the actual officials from those jurisdictions have changed somewhat with the passage of time. The activities have been carried out with existing resources and personnel; additional staff and specific funds were not dedicated to the Working Group.

The Working Group has reviewed relevant research and undertaken original research, studied programs and policies implemented in various sites within Canada and elsewhere, and conducted legal analysis. The Working Group also took into consideration reports issued by other groups, such as the Alberta Task Force on Children Involved in Prostitution.

At the request of ministers responsible for justice, the Working Group consulted broadly with key stakeholders. Participants in the consultations included representatives of citizens' groups, justice officials, current and former prostitutes, municipal and provincial officials, community service providers, educators, clergy, aboriginal groups, child welfare and health workers and women's advocates. Since March 1995, consultations have been completed in British Columbia, Nova Scotia, Saskatchewan, Alberta, New Brunswick, Manitoba, Ontario, Quebec and the federal jurisdiction.

An interim report of the consultations was issued by the Working Group in October 1995. Based on the results of that report, the Working Group developed preliminary recommendations which were presented to Deputy Ministers in the Fall of 1995. A number of these recommendations were acted upon by the Federal Government in Bill C-27, *An Act to Amend the Criminal Code*

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[1] As the main task of the Working Group was to deal with prostitution-related activities, as opposed to sexual exploitation generally, the Working Group prefers to use the expression "youth involved in prostitution", as opposed to "sexually procured youth" or "sexually exploited youth." For the purposes of this report, the term "youth" includes a person under the age of 18 unless otherwise indicated.

[2] The word "harm" has been used more frequently than the word "nuisance"in the context of the discussion concerning the problems related to street prostitution. While the term "nuisance" might be more appropriate from a legal perspective, the affected public felt that it was not broad enough to cover the real impact of street prostitution on their lives.

(Child Prostitution, Child Sex Tourism, Criminal Harassment and Female Genital Mutilation). The Bill was proclaimed into force on May 26, 1997.

The changes included in Bill C-27 were aimed at protecting youth from adult predators who seek children for sexual services or exploit youth involved in prostitution for economic gain. These amendments were intended to make it easier to apprehend and prosecute Canadians involved in sexual offences against children, whether in or outside Canada. A new offence of "aggravated procuring," which carries a five year minimum sentence, was also created for those who, living on the avails of a child, use violence against that child and force that child to carry on prostitution-related activities for profit. Special protections to ease the burden for young complainants testifying in court were also made available to children testifying against pimps and customers. These protections involve testimony from behind a screen, or other less intimidating methods of testifying such as using videotape or closed-circuit television. Bill C-27 also modernized some of the prostitution-related provisions of the *Criminal Code*.

Since Bill C-27 came into force, the Working Group has continued its work and has developed further recommendations to address both the issues of street prostitution and youth involved in prostitution.

YOUTH INVOLVED IN PROSTITUTION

A clear consensus emerged from the research and consultations. The response to the involvement of youth in prostitution must include both social intervention strategies and measures to enhance the effectiveness of the response of the criminal justice system towards these youth.

Youth involved in the sex trade are victimized disproportionately compared to other youth: they are more at risk of being robbed, beaten and sexually assaulted at the hands of pimps or customers. These young people are in need of accessible medical services, shelter, substance abuse treatment, crisis counselling and on-going support. Consultation participants expressed strong support for an interagency, multi-disciplinary approach to the provision of these services. The most effective programs reviewed by the Working Group were those in which police, Crown and child welfare officials worked in partnership to ensure the safety of the young victim/witnesses and to provide the supports necessary to promote a successful transition away from prostitution.

The criminal justice system has an important role to play in responding to those who sexually exploit youth. For the most part, the Working Group concluded that the current practices respecting sentencing of customers of youth involved in prostitution should be reviewed once more is known about the impact of the recent amendment to ss. 212(4) and the creation of ss. 212(5), brought in by Bill C-27. Although the maximum penalties of 10 years imprisonment for pimps of adults and youths provided in ss. 212(1) reflect the seriousness of procuring offences, the Working Group believes that all procuring offences against youths should carry the same penalty of 14 years imprisonment, as is currently available for living on the avails of prostitution of a young person. As well, the Working Group supports the mandatory minimum sentence of five years for "aggravated procuring" (Bill C-27) of persons under the age of 18

because the minimum sentence is triggered by an additional element of violence threatened or used.

The Working Group concluded that the deficiencies in the criminal legislation in relation to youths relate mainly to barriers to effective enforcement of the law. A number of recommendations are made to enhance the enforceability of the law, including amendments to the *Criminal Code* provisions governing interception of private communications. One of the significant recommendations relates to further amending ss. 212(4) of the *Criminal Code* to increase its enforceability by facilitating the collection of evidence that an adult obtained sexual services from a person under 18, as youth involved in prostitution rarely consent to testify in court. Although Bill C-27 has recently amended this subsection and created ss. 212(5), the Working Group believes that the provisions should be further amended to make the offence even easier to enforce by facilitating the use of evidence from undercover police officers.

All participants in the consultation process agreed that the most effective strategies for addressing the involvement of youth in prostitution are those that would prevent them from engaging in this dangerous and damaging activity. Early intervention and educational awareness strategies, including the development of educational tools and resources, are critical for those who are closest to youth: parents, teachers and peers. Such tools should be developed to assist in identifying youth at risk and intervening in an effective manner.

STREET PROSTITUTION

S. 213 of the *Criminal Code* was introduced in 1985 to address the nuisance aspect of prostitution. However, during consultations it became obvious that problems related to street prostitution went beyond nuisance. The clear direction emerging from the consultations was that strategies related to street prostitution should have two major objectives: the reduction of harm to communities and the prevention of violence against prostitutes. The harm, evidenced by the noise, litter (including infected needles) and traffic, as well as by the associated substance abuse and violence, has persisted despite the availability of s. 213.

The street is a dangerous place for prostitutes. There is a relationship between violence against prostitutes, including assaults and homicides, and the venue of its occurrence. Nearly all assaults and murders of prostitutes occur while the prostitute is working on the street. Decisions relating to how street prostitution should be addressed must take into account the potential for increased violence against prostitutes.

The Working Group received varying views regarding an appropriate approach to street prostitution. Although there was consensus that some control measures are necessary to address the nuisance and harm associated with this activity, opinions varied on the regulatory mechanisms that should be adopted. Some respondents felt that the current legislation should be rigorously enforced and even enhanced; others argued for decriminalization of street prostitution.

The Working Group agreed that *Criminal Code* amendments are not the most appropriate mechanisms for responding to all problems associated with street prostitution. Moreover, in

discussing possible amendments, there was lack of consensus on specific options, such as hybridizing s. 213 and measures to address the use of motor vehicles by customers of prostitutes.

Approaches which were unanimously supported were those pertaining to social interventions: provision of accessible services, including substance abuse programming and safe houses. Other alternatives were cautiously endorsed, including certain types of community conflict resolution and the use of the existing power of municipalities to control traffic patterns in areas where street prostitution is a problem.

Measures specifically directed at customers of street prostitution were reviewed, including "shame the johns" campaigns and "john schools." There was mixed support for these models in the consultations and by the Working Group, given the lack of evaluations of such programs.

The *Criminal Code* is inconsistent on the issue of prostitution. Prostitution itself is legal but most activities associated with it are not. The law is silent on when and under what conditions prostitution is allowed to occur. During the consultations, participants expressed differing views on whether or how this inconsistency should be addressed. The option of amending the *Criminal Code* to allow provinces and territories, through interested municipalities, to establish regulatory schemes to licence and operate prostitution establishments was of interest to some participants but received little support at the municipal level. In subsequent discussions, however, Toronto, Calgary and Quebec City indicated an intent to explore these options. Research on decriminalization models in other countries is either unavailable or inconclusive. Furthermore, the Working Group recognizes that any model of decriminalization cannot address all problems of street prostitution nor would it address the involvement of youth in prostitution.

Given the mixed response from respondents, and the lack of evidence on effective models, the Working Group was unable to recommend decriminalization of s. 213 or the repeal of the bawdy-house provisions of the *Criminal Code* (s. 210 and s. 211).

PART I - OVERVIEW

A. CONTEXT OF PROSTITUTION IN CANADA TODAY

(i) Historical Background

Prostitution *per se* has never been a crime in Canada; rather, it has been, and continues to be, attacked indirectly. Currently, there are many prohibitions surrounding the act of taking money for sex that, in most cases, seem to bring in an element of illegality, whatever form the practice takes. These provisions are included in the *Criminal Code* and include offences such as those relating to bawdy-houses (s. 210 and s. 211), procuring (s. 212), and communicating (s. 213).

These laws were developed in an *ad hoc* manner and reflect concerns that arose at different points in our history. Constance Backhouse[3] notes that early prostitution legislation in Canada had three main approaches -- regulation, prohibition and rehabilitation. The approaches reflected different views ranging from those of moral reformers who wanted to see prostitution eradicated to those who saw prostitutes as victims needing protection from the law. These different perspectives continue today.

(ii) Legislation on Soliciting

The early 1970s marked the inception of modern street prostitution legislation. In 1972, "Vag C" or the vagrancy law, dating from the prohibition era, was repealed. The vagrancy law held that a woman had to be able to account for her presence on the street or risk being prosecuted as a "common" prostitute. Changing times and objections from civil libertarians and women's groups necessitated the shifting focus of prostitution law from a "status offence," involving no specific behavior, to one prohibiting soliciting. S. 195.1 of the *Criminal Code*, which replaced the vagrancy law, stated: "Every person who solicits any person in a public place for the purpose of prostitution is guilty of a summary conviction offence." Prostitution itself was not an offence, but soliciting or publicly obtaining customers became one.

Between 1972 and 1981, courts throughout the country struggled with interpretations of what the new term "solicit" meant. Provincial courts of appeal were asked to rule as to whether a wink, a nod or a casual conversation constituted soliciting. Court decisions generally held that where a level of importuning or persuasion was exercised, soliciting had taken place.

In 1978, the Supreme Court of Canada ruled that soliciting, to be seen as a crime, had to be *pressing* or *persistent*. Subsequently, the Supreme Court also ruled that to be pressing or persistent, the conduct had to be directed toward a single potential customer and could not consist of an accumulation of advances toward different potential customers.

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[3] Canadian Advisory Council on the Status of Women. *Prostitution in Canada* (1984).

Court decisions also differed on whether customers, as well as prostitutes, could be charged with soliciting and on what was meant by the term "public place." Such decisions, and in particular those that found that a motor vehicle was not a public place, were seen by police forces as a critical impediment to the control of street prostitution. By the early 1980s, the soliciting section (s. 195.1) virtually ceased to be used.

(iii) The Fraser Committee

In June 1983, faced with considerable public pressure to remedy the "street prostitution problem," the Government of Canada established the Special Committee on Pornography and Prostitution to study the problem and to report solutions to the Minister of Justice. Known as the Fraser Committee, it held public and private hearings across the country in an attempt to obtain maximum input from the Canadian public as to its concerns about prostitution. The hearings illustrated that the street prostitution issue divided the Canadian public; it pitted municipal officials, police forces and citizens' groups, who felt that the *Criminal Code* should be strengthened to control street prostitution, against civil libertarians, women's groups and social services agents who favoured some form of decriminalization.

In May 1985, the Committee reported to the Minister of Justice.[4] Prostitution was described as a social problem that required both legal and social reforms. The Committee argued that it was the "contradictory and often self-defeating nature of the various *Criminal Code* sections relating to prostitution" that led to an increase in street prostitution. The Committee noted that even though prostitution is legal, the law could be used against it in most venues and/or situations. The Committee held that if prostitution is indeed legal, then the issue of "where" and "when" it can occur should be addressed.

(iv) Bill C-49: Creation of the Offence of "Communicating for the Purpose of Prostitution"

On December 20, 1985, the Government of the day repealed the soliciting law and replaced it with the "communicating law" in Bill C-49. The Government chose not to follow the direction proposed by the Special Committee and decided to replace s. 195.1 with a new provision aimed at more effective control of street prostitution. In general, this provision, now s. 213, makes criminal the communication, or the attempt to communicate with, or to stop a person in a public place for the purposes of obtaining the sexual services of a prostitute. The term "every person" means that both prostitutes and customers are liable to prosecution, while the term "public place" is defined as including a motor vehicle, thus clarifying two limitations of the former legislation.

When the legislation was introduced in the House of Commons, the then Minister of Justice, the Honourable John Crosbie, stated that the purpose behind the legislation was not an attempt to deal generally with all the legal issues connected with prostitution, but was a limited attempt to address the nuisance created by street soliciting that sought to balance the concerns of law

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[4] Special Committee on Pornography and Prostitution. *Pornography and Prostitution in Canada: Report of the Special Committee on Pornography and Prostitution.* Ottawa: Department of Supply and Services Canada, 1985.

enforcement agencies, citizens' groups, women's groups and civil libertarians. It made criminal the *public* activities most frequently engaged in for the purpose of offering or purchasing sexual services.

Considerable controversy and concern surrounded this new legislation. Parliament included a requirement to review the legislation within three years from the time it was enacted. On April 5, 1989, the Standing Committee on Justice and the Solicitor General was designated for that purpose.

In May 1987, studies to evaluate the effects of the communicating provision were initiated by the federal Department of Justice. Before the research was complete, the communicating law was challenged on the basis that the provisions around communicating (s. 213), or keeping of bawdy-houses (s. 210), or both, were inconsistent with the *Canadian Charter of Rights and Freedoms*. In May 1990, however, the Supreme Court of Canada held that, while the communicating section is an infringement on the freedom of expression, the elimination of street solicitation, and the social nuisance it creates, is a governmental objective of sufficient importance to justify a limitation on the freedom of expression guaranteed by ss. 2(b) of the *Charter*. The dissenting opinion found that since both communication and prostitution are lawful, the legislative response of potential imprisonment for a combination of these actions was far too drastic.

In its *Fourth Report of the Standing Committee on Justice and the Solicitor General on Section 213 of the Criminal Code (Prostitution-Soliciting),* released on October 4, 1990, the Standing Committee presented the results of the research on the effects of the communicating provision, as well as recommendations concerning s. 213. The results indicated that while s. 213 had not reduced levels of street prostitution in Vancouver, Toronto, Winnipeg, Calgary or Regina, some decrease was found in Montreal, Quebec City, Niagara Falls, Ottawa and Halifax. The research results indicated that the law was not meeting its objectives as its main effect in most centres had been to move street prostitutes from one downtown area to another, thus merely displacing the problem. However, as mentioned in the previous paragraph, the Supreme Court of Canada had already ruled that the communicating law was a justifiable infringement because its strengths (reducing the street nuisance associated with street prostitution) outweighed the infringement on freedom of expression. Had the research results been available prior to the Supreme Court decision, the question of whether s. 213 is a justifiable infringement on freedom of expression might have been considered differently.

The first recommendation of the Standing Committee in respect of s. 213 was that funding be developed for agencies providing programs for prostitutes wishing to leave the street trade, and that were responsive to their needs. The Committee also recommended that the *Identification of Criminals Act* be amended to allow for the fingerprinting and photographing of those charged under s. 213 of the *Criminal Code*, whether as prostitutes or as customers. Finally, the Committee recommended that s. 213 be amended to provide sentencing judges with the discretion to prohibit persons convicted of street solicitation involving a motor vehicle, in addition to any other penalty imposed, from driving a motor vehicle for a period not to exceed three months. The last two recommendations were carried despite lack of consensus.

The federal government tabled its response to the Report in the House of Commons on March 1, 1991. The government endorsed the objective of Recommendation 1, but broadened its scope to take into account the needs of prostitutes and not only those of prostitutes wishing to leave the street. The government rejected the second recommendation of the Committee on the basis that it did not strike an appropriate balance between the societal concerns with respect to the situation of prostitutes and the objective of effective law enforcement designed to diminish, if not eradicate, the nuisance effects of street solicitation. Recommendation 3 was rejected on the basis that the powers conferred on the sentencing judge in the *Criminal Code* are sufficient to exercise discretion appropriately.

(v) Violence Against Prostitutes

Before the passage of Bill C-49 in 1985, a number of objections to the legislation were voiced by critics. Many social agencies and women's groups anticipated that women working in the sex trade would be more vulnerable as a result of the law, not only because they were liable to arrest and prosecution, but because that they would be more at risk of victimization by pimps and customers. It was suggested that the street prostitution trade would be displaced to new locations that offered less protection (in terms of street lighting, for example) and that women would be forced to work in less familiar, and hence more dangerous, locations to avoid apprehension.

Statistics from the Canadian Centre for Justice Statistics show that 63 known prostitutes were found murdered between 1991 and 1995 (Canadian Centre for Justice Statistics, 1997). Almost all of the murdered prostitutes were female (60 of the 63). During this period, known prostitutes were the victims in 5% of all female homicides reported (1,118 deaths). At the end of 1996, 54% of homicides involving known prostitutes reported between 1991 and 1995 remained unsolved (34 incidents). In comparison, only 20% of all homicide incidents remained unsolved when they involved victims other than known prostitutes.

Research was proposed that would attempt to better explain these homicides and other violence experienced by prostitutes since the new legislation.

(vi) Studies on Violence Against Prostitutes

Street prostitution has always been a dangerous business. In 1984, the report of the Committee on Sexual Offences against Children and Youths[5] (Badgley Committee) noted that about two thirds of the street prostitutes interviewed had been physically assaulted in the course of their work. Researchers evaluating the input of Bill C-49 in many of the cities studied (Vancouver, Calgary and Montreal) were surprised by the recurrent accounts of prostitutes being confronted by armed assailants, stabbed, threatened, beaten up and robbed. In the 1988 Calgary study, Brannigan reported that one half of the prostitutes interviewed had been victims of sexual and physical violence. Interviews conducted in 1988 in Vancouver of women involved in prostitution suggest that street prostitution is generally more dangerous than off-street work (Lowman and Fraser, 1995). A much larger proportion of respondents working on the street reported that they

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[5] Committee on Sexual Offences Against Children and Youths. *Sexual Offences Against Children*. Ottawa: Department of Supply and Services Canada, 1984.

were robbed, sexually assaulted, beaten, strangled, kidnapped, and were more likely to be involved in a situation where a weapon was used, or were the victims of attempted murder. In contrast, the highest incidence of off-street victimization included "refused condom," "threat/intimidation" and "general harassment."

The same study found that 40% of the 65 sex trade workers interviewed carried a weapon while working on the street, whereas only 15% of the sample carried a weapon while trading sexual favours indoors. This fact may place them and/or others at risk. Between 1991 and 1995, for instance, 18 prostitutes were implicated in the deaths of 10 "tricks", one pimp, and five other individuals (Canadian Centre for Justice Statistics, 1997).

On behalf of the Federal-Provincial-Territorial Working Group on Prostitution, studies on violence against prostitutes were conducted in 1994 and 1995 in Halifax, Montreal, Toronto, Calgary, Winnipeg and Vancouver. The objective of these studies was to understand the impact of the communicating provision (s. 213) on homicide and violence against street prostitutes. The studies documented that the atmosphere on the street in each of the sites had become more tense, although a causal link between enforcement and prostitutes' deaths could not be established.

Specifically, the following was found. In Vancouver, researchers felt that the implementation of s. 213 had consolidated the criminal status of street prostitutes, forced them to work in more remote areas and pushed them into more adversarial relationships with police. This situation was believed to contribute to the murder of street prostitutes. In Calgary, prostitutes reported that the street had become a much more tense and fearful milieu. Yet increases in violent crimes against street prostitutes were mirrored by an increase in violent crimes against women in general. This provides a competing explanation. In Montreal, there was evidence that enforcement of s. 213 had resulted in prostitutes working in more remote areas, being less careful in choosing from a diminished number of customers and being further entrenched in drug use than had been reported in earlier studies.

In 1992, in Halifax, police and Crown policies resulted in successful arrests of large numbers of pimps. However, these policies inadvertently contributed to violence against street prostitutes who were convinced to testify against their pimps. Initially, in the absence of protection programs, police and Crown reported that these prostitutes were beaten by these men once they returned to their homes. As a result, witness protection programs, including the provision of safe houses, were established.

B. THE WORKING GROUP AND ITS MANDATE

The Working Group on Prostitution was established in 1992 by the Federal-Provincial-Territorial Deputy Ministers Responsible for Justice, at the suggestion of British Columbia. It is composed of officials from British Columbia (Co-chair), Alberta, Manitoba, Ontario, Nova Scotia, Justice Canada (Co-chair) and Solicitor General Canada. The jurisdictional composition of the Working Group has remained the same since 1992; however, the officials from those jurisdictions have changed somewhat with the passage of time. All of the activities have been done with existing resources and personnel; additional staff and specific funds have not been dedicated to the Working Group.

Deputy Ministers asked that the Working Group review legislation, policy and practices concerning prostitution-related activities and bring forward recommendations to address problems posed by prostitution. The Working Group was to consider the adequacy of current legislation at the federal and provincial levels; the role of municipalities; law enforcement issues; and, possible partnerships between departments of justice and other government agencies, including social service agencies.

The Federal-Provincial-Territorial Ministers Responsible for Justice subsequently requested that a focus be given to the involvement of youth in prostitution. On the basis of these instructions, the Working Group identified the following as their primary issues of concern: youth involved in prostitution, harm to neighbourhoods as a result of street prostitution and violence against prostitutes.

The Ministers also instructed the Working Group to undertake consultation with key stakeholders prior to bringing forward recommendations on these issues of concern. These consultations were deemed necessary and appropriate in order to determine whether consensus could be achieved on prostitution-related strategies. The consultations were also to aid the Working Group in determining areas in which research was advisable.

C. CONSULTATIONS, RESEARCH AND OTHER STUDIES

In March 1995, the Working Group prepared a consultation document, *Dealing with Prostitution in Canada: A Consultation Paper*, which served as the basis for the national consultations. The consultation paper was mainly concerned with two critical issues: the involvement of youth in prostitution and street prostitution. For both issues, the options fell into the two basic groups of enforcement and law reform options and social intervention options.

Each jurisdiction was requested to consult individually because of the lack of additional resources. The size and format of the consultations varied.[6] Most jurisdictions' consultations included representatives of citizens' groups, community service providers, educators, municipal and provincial officials, women's advocacy groups, aboriginal groups, current and former prostitutes and their advocates, child welfare and health workers, police officers and Crown Counsel.

The consultations have taken longer than expected; the most recent consultation was completed in the Fall of 1997. At the time of the writing of this report, consultations have been completed in British Columbia, Nova Scotia, Saskatchewan, Alberta, New Brunswick, Manitoba, Ontario and Quebec. The federal jurisdiction has also consulted with national organizations. Although it is regrettable that all jurisdictions have not undertaken consultations, the Working Group believes there to be an adequate cross-section of views to prepare this report.

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[6] It is interesting to note that the results of the consultations seemed to be affected by the way in which they were conducted. Consensus was more easily achieved in a group forum, where the police, citizens, women's advocacy groups, prostitutes, etc., were consulted at the same time. Participants at such meetings seemed to learn from one another's experience, resulting in less polarized approaches to the issues discussed.

In many areas of the country there was a clear split between the views brought forward by different stakeholders. While citizens' groups and police demanded better enforcement of the current legislation and more legislation in certain areas, many women's advocacy groups and prostitutes' groups lobbied for decriminalization of street prostitution. However, while people consulted were quite divided when it came to the criminal justice options, the social intervention options were broadly supported.

A majority of the participants agreed that some of the problems associated with prostitution could be addressed by early intervention, including social support such as health care, programs for substance abuse, counselling, crime prevention, and educational and recreational services. While this was discussed in terms of youth involvement, many respondents identified the service needs of adults as well.

A final report of the consultations as completed by December 1997 will be available shortly.

In addition to the mandated consultations, a series of studies on key issues relevant to prostitution were developed by participating jurisdictions. This research covered issues of youth involved in prostitution, men who buy sex, violence against prostitutes, and the number of people involved in street prostitution across Canada. These studies, along with reports developed by special task forces on prostitution, such as the Alberta Task Force on Children Involved in Prostitution, augmented the consultation information that served as the basis for the recommendations of the Working Group.

D. INTERIM RECOMMENDATIONS OF THE WORKING GROUP

In October 1995, following the preparation of an interim report of the consultations, the Working Group urged the federal government not to proceed with amendments to the *Criminal Code* before all consultations were completed. Nevertheless, since there was a strong interest by the federal government in addressing this issue quickly, the Working Group decided to develop interim recommendations on the basis of the consultations that had taken place. These recommendations, presented to Deputy Ministers in the Fall of 1995, were made on the basis of the consultations undertaken by British Columbia, Alberta, Saskatchewan, Nova Scotia, New Brunswick and the federal government. In making these recommendations, the Working Group tried to reflect those areas where there was consensus or strong support. The Working Group did not make recommendations on the basis of options that only obtained mixed support.

Briefly, the Working Group's interim recommendations emphasized the importance of training for justice personnel, the need to ensure that the youth who are involved in the sex trade are given appropriate support services, that they are able to testify safely in court against pimps and customers, and that public awareness programs are supported in order to warn youth of the dangers of the sex trade. The Working Group recommended that the offence which prohibits a person from obtaining, for consideration, the sexual services from a youth (s. 212(4)) be made more easily enforceable. The Working Group also recommended that antiquated wording within the prostitution provisions of the *Criminal Code* should be modernized.

A number of recommendations which focused on issues related to youth involved in prostitution have been addressed in Bill C-27, *An Act to Amend the Criminal Code (Child Prostitution, Child Sex Tourism, Criminal Harassment and Female Genital Mutilation)*. Bill C-27 was introduced in the House of Commons on April 18, 1996. It was proclaimed into force on May 26, 1997.

The changes included in the Bill were aimed at protecting youth from adult predators who seek children for sexual services or exploit youth prostitutes for economic gain. They were intended to make it easier to apprehend and prosecute Canadians involved in sexual offences against children, whether in or outside Canada. A new offence of "aggravated procuring," which carries a five year minimum sentence, was also created for those who, living on the avails of a young person, use violence against that person and assist that person to carry on prostitution-related activities for profit. Special protections to ease the burden for young complainants testifying in court were also made available to youth testifying against customers and pimps. These protections involve testimony from behind a screen or other less intimidating methods of testifying, such as using videotape or closed-circuit television. Bill C-27 also modernizes some of the prostitution-related provisions of the *Criminal Code*.

PART II - YOUTH INVOLVED IN PROSTITUTION

A. INTRODUCTION

Youth involved in prostitution are in many ways victimized. A combination of psycho-social and socio-economic factors, including histories of sexual abuse and poor income and employment histories, are primary contributors to the marginalization of those who engage in prostitution. Several studies have indicated that these youth are a high-risk group not only due to their sexual practices but also, as a result of their exposure to drugs and violence while on the street.[7]

(i) The Involvement in Prostitution of Homeless or Runaway Youth

There is a body of evidence that suggests a developmental pattern typical of those youth involved in prostitution: a history of family dysfunction (including substance abuse, violence and sexual abuse)[8] which leads to youth running away from home, sometimes at a very young age[9] and entering a street culture, that is, living on the street or spending a great deal of time on the street.[10] This pattern may vary between subgroups of youth. For example, many of the street youth in Saskatoon identify themselves as aboriginal, whereas street youth in Ottawa primarily identified themselves as Caucasian. Aboriginal youth appear to be less likely than non-aboriginal to cut ties with their families after entering the street culture.[11]

The victimization that may have been experienced at home is frequently part of the experience of these youth on the street.[12] Research studying homeless youth further suggests there may be a pattern of increasing involvement in criminal activity as the length of time on the street increases.[13] The criminal activity may include drug use, theft and prostitution.

There is some indication from studies of homeless youth in Vancouver, Ottawa, Saskatoon, and Toronto that street youth who turn to prostitution do so as a means of support while on the streets, although it cannot be assumed that homeless or runaway youth are inevitably involved in

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[7] Youth Services Bureau, *Ottawa Street Prostitutes: A Survey,* 1991; and Research Subgroup of the Committee for Sexually Exploited Youth in the CRD, *A Consultation with 75 Sexually Exploited Youth in the Capital Regional District (CRD) of British Columbia,* 1997 (the latter will be referred to as "the Victoria study" of sexually exploited youth).

[8] See for example, the Ottawa street youth study: T. Caputo, R. Weiler and K. Kelly. *Phase II of the Runaways and Street Youth Project: The Ottawa Case Study.* Ministry of Supply and Services Canada, 1994; and the Saskatoon street youth study: T. Caputo, R. Weiler and K. Kelly. *Phase II of the Runaways and Street Youth Project: The Saskatoon Case Study.* Department of Supply and Services Canada, 1994.

[9] The Ottawa street youth study (previously cited) found that the age of leaving home was as young as eight years and the average age was 14 years.

[10] The study of street prostitution in Ottawa (previously cited) found that 71% of those interviewed had run away from home for more than 24 hours before the age of 16.

[11] From Caputo, *et al.*, the study of Saskatoon street youth (previously cited).

[12] From Caputo, *et al.*, the study of Saskatoon street youth (previously cited).

[13] From W. McCarthy, *On the Streets: Youth in Vancouver.* Province of British Columbia, Ministry of Social Services, 1995.

the sex trade. Homeless or runaway youth are sometimes known to exchange sexual services for food, lodging or gifts, or to experiment with their sexuality (e.g., young male prostitutes working on the street as a way of "coming out"). Sex for survival appears to be more of a factor for females than males: a study of Ottawa street youth found that males are more frequently able to simply stay at an acquaintance's home, whereas females are frequently forced to trade sex for food, shelter, and money.[14] These young people do not often come to the attention of the law or appear in official statistics as prostitutes.

One study of street youth in Vancouver found that 46% of "street youth" had received offers of assistance to help them work in prostitution. Approximately one-quarter of the youth reported that they had received these offers for assistance more than once or twice (McCarthy, 1995). The same research found that being exposed to others who work in prostitution has a large effect on working in the sex trade. Eighty-six percent of youth who received frequent offers of assistance did work in the sex trade, compared to 25% of youth who rarely received offers (McCarthy, 1995).

Issues specific to certain groups, such as aboriginal youth, need to be considered in reviewing the needs of these youth. The consultations suggested that many aboriginal youth who eventually joined the sex trade had left their home communities for urban areas. These youth may feel doubly alienated because they may be both homeless and in a culture that is quite different from that in their home community. This can make them particularly vulnerable to sexual exploitation by pimps and customers.

(ii) Characteristics of Youth Involved in Prostitution

Any attempts to develop a profile of youth who are involved in prostitution in Canada is difficult because of the lack of information on them. There is some evidence that many are runaways and homeless and engage in street prostitution. However, research also indicates that some engage in prostitution even though they live at home, and some work through indoor venues such as escort agencies.[15] It is widely believed that many youth who become involved in prostitution had a history of childhood sexual abuse.[16]

Estimates of the numbers of females and males who are involved in prostitution vary. Several recent studies indicate that the proportion of males may be higher than previously assumed.[17] As

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[14] Caputo *et al.* The study of Ottawa street youth (previously cited).

[15] From the Victoria study of sexually exploited youth (previously cited).

[16] The Badgley Committee did not find any higher levels of sexual abuse among juvenile prostitutes compared to the population at large. Brannigan *et al.*, in a study of street prostitution in Calgary, reaches a similar conclusion. However, other studies support the belief that childhood sexual abuse is a major factor in explaining entry into prostitution. For example, a 1984 survey of prostitutes in Montreal found that 45% had been victims of incest before becoming prostitutes (Gemme *et al.*, 1984). Similarly, high levels of child sexual abuse were reported by C. Bagley and L. Young in "Juvenile Prostitution and Child Sexual Abuse: A Controlled Study," *Canadian Journal of Community Mental Health.* Vol. 6, no. 1, 1987.

[17] The Victoria study of sexually exploited youth found that a nearly equal number of males and females responded to advertisements requesting interviews with youth involved in prostitution. The Ottawa study of street prostitution relied on interviews with people known to street workers and found that 54% of street prostitutes interviewed were male and 46% were female.

with studies of street youth, descriptions of the ethno-cultural identity of youth in the sex trade vary across Canada, and even within some cities. For example, consultations suggested that there is a higher level of aboriginal youth involved in prostitution in Saskatchewan and Manitoba than in other areas of the country. Within Vancouver, the estimates of aboriginal youth in the sex trade are quite high in some areas of the Downtown Eastside, but not in other areas.[18]

Similar difficulties are encountered when attempting to estimate the age at which youth enter the sex trade. Various studies and consultations with people involved in prostitution indicate that there are youth who turn their first trick as young as 6 years of age.[19] Estimates of the average age of entry into the sex trade also varies: a Victoria survey and the British Columbia consultations estimate age of entry between 14 and 15.5 years of age, however a survey of prostitutes in Vancouver found an average age of entry as 16.3 for females and 15.6 for males.[20] Other research gives higher estimates: an Ottawa survey found the average age of entry to be 17.8 years of age.[21] A survey of street prostitutes in Montreal did not report an average age of entry, but noted that one third of the 75 prostitutes interviewed had entered the sex trade before the age of 18.[22]

Perhaps one of the major problems in developing a profile of youth involved in prostitution in Canada is that there are no reliable estimates of the number of youth involved. One of the problems in identifying the number of these youth relates to the different ages that are used when referring to youth involved in prostitution. The Badgley Committee[23] defined "juvenile prostitutes" as those under 20. The Fraser Commission[24] addressed those under 18, while still others describe youth as persons under 16, especially when viewing them in the context of child welfare concerns. These distinctions may account for different explanations of what is meant by "youth involved in prostitution" and how much of it exists. The Working Group has adopted the maximum age referred to in the definition of "young person" included in the *Young Offenders Act*, i.e., a person under 18 years of age. This is also consistent with Parliament's view that prostitution of young persons under the age of 18 represents sexual exploitation from which these young persons should be protected, as signified by the creation of the offence contained in s. 212(4) of the *Criminal Code*.

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[18] The Vancouver consultation is supported by a study of women involved in prostitution, including those under 18 years, which found that 70% of women involved in prostitution in the Downtown Eastside/Strathcona area of Vancouver were aboriginal (S. Currie, *Assessing the Violence Against Street Involved Women in the Downtown Eastside/Strathcona Community: A Needs Assessment*, 1994). However, a study that looked at other areas of Vancouver found only 11% of the women involved in prostitution surveyed to be aboriginal (J. Lowman and L. Fraser, *Violence Against Persons Who Prostitute: The Experience in British Columbia*, 1995).

[19] From J. Lowman and L. Fraser, *Violence Against Persons Who Prostitute: The Experience in British Columbia*, 1995. Also see the Victoria study of sexually exploited youth, the British Columbia consultation, and the Saskatoon street youth study.

[20] From J. Lowman, and L. Fraser. *Street Prostitution: Assessing the Impact of the Law: Vancouver*. Department of Supply and Services Canada, 1989.

[21] From the Ottawa study of street prostitution (previously cited).

[22] Gemme, *et al. Street Prostitution: Assessing the Impact of the Law: Montreal.*

[23] Badgley Committee.

[24] Fraser Committee.

Furthermore, there is disagreement over definitions of whether a youth is actually involved in prostitution. A Montreal study of street prostitution[25] reported that police defined "juvenile prostitute" more narrowly than did social workers, who tended to include any youth involved in the exchange of sex for consideration, including food, shelter or even parties in arcades. One of the major consequences of these problems with definitions is the lack of reliable statistics on the number of youth involved in prostitution.

Some people attempt to estimate youth involvement by referring to arrest statistics for s. 212. From 1986-1990, roughly 10-15% of prostitutes arrested under the communicating provision of the *Criminal Code* were in the young offender age category; the majority of these were 16 or 17. There were some reports of 14- or 15-year olds, but these were rare. The number of young persons charged has continued to decline until 1995,[26] when only 3% of charges for prostitution offences were youth from 12 to 17 years of age.

The small numbers of youth who are charged with prostitution-related offences most likely reflect police enforcement patterns as opposed to the real number of youth involved in street prostitution. Some police departments have articulated the view that youth should often be treated as victims rather than criminals and in such cases should not be arrested unless there is no other vehicle for getting them off the street and out of danger.[27] Thus, unless charges are laid under ss. 212(4) (obtaining the sexual services from a person under 18 years of age), youth involved in prostitution are virtually invisible.

The survey of youth in the Victoria area who identified themselves as sex trade workers revealed an interesting pattern, which may reflect this type of police policy in that city. Most of the 75 youth had been picked up by the police at some time in their lives (77%), however, of those who had been picked up, most were either simply taken home (47%), lectured about the dangers of the sex trade (43%) or taken to a social resource such as a shelter, social worker or clinic. Fifteen percent of the 75 youth in the sample had been arrested for communicating for the purpose of prostitution; all of them were under the age of 24. None of the youth who were under 18 when the interview occurred reported that they had been arrested for this offence. This is in contrast to arrests for other non-prostitution offences in which age was not a factor in the number of arrests.

Information from the consultations appears to support the assumption that roughly 10-15% of prostitutes on the street are youth. In British Columbia, social agencies and advocates provided estimates of the number of youth involved in prostitution both in Vancouver and in areas not typically believed to have significant prostitution problems. Of the total number of people thought to be involved in street prostitution in Vancouver in 1996 (estimated to be between 300 and 450), approximately 30 to 40 on any given night were believed to be youth. Many of these are aboriginal youth. However, as indicated before, these estimates are highly dependent upon definitions of "prostitution." The 1987 study of street prostitution in Montreal obtained estimates

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[25] Gemme, *et al. Street Prostitution: Assessing the Impact of the Law: Montreal.*

[26] There were exceptions to this trend. For example, Brannigan reports a police policy of actually targeting youth for arrest as a possible factor in the increase in the number of youth arrested for prostitution offences from 1977 to 1987 (from 1.3% of total arrests of prostitutes to 18%).

[27] Police policies in Vancouver, Toronto and Montreal. Note exception in previous footnote.

of the number of youth involved in prostitution ranging from 80 to over 5,000, apparently as a result of differences in definitions.

It should be noted that while this report focuses on those youth who engage in selling sex, there are also youth who become involved in other aspects of prostitution. It appears that in some jurisdictions, youth are also becoming involved in the more serious forms of prostitution-related offences, such as recruiting and pimping other youth, although the number of youth engaged in these activities is not known.[28]

(iii) Responses to Youth Involved in Prostitution

Police practices in some areas have been somewhat successful in removing youth from the street. For example, police in Montreal, Toronto, Calgary, Vancouver and Halifax have been able to connect some youth with social services effectively and, at the same time, obtain needed evidence to convict the adult customer.

Most respondents noted that, rather than being dealt with through the criminal justice system, young persons should be taken into care under provincial child welfare legislation, as a neglected child or a child in need of protection. As is the case in other provinces' child welfare legislation, British Columbia's *Child, Family and Community Services Act* now contains a reference to sexual exploitation as a basis for taking a youth into care. Similarly, it provides for the use of restraining orders against adults who are believed to be exploiting the child (e.g., a pimp). Alberta's *Child Welfare Act* is even more explicit, defining a child in need of protection as one who is sexually abused, and defining this abuse as including prostitution-related activity. Both jurisdictions have penalties of fines and incarceration for those who abuse children and youth through prostitution.

Social agencies acknowledge the difficulty in reaching young people on the street. The lure of the street, with its feeling of independence and freedom, initially may be a welcome alternative to the violence, manipulation and abuse that these youth may have been exposed to at home. However, in time, many of the abusive patterns these young persons were subject to at home return, only in a different setting - the street itself. Respondents felt that to become more effective, social agencies need to focus on preventing youth from leaving home. Programs and funds are needed to identify and address risky behaviour at an early stage. However, it is also important that crisis intervention services, such as safe houses, detoxification and substance abuse programming, and outreach workers be available to and accessible by youth involved in the sex trade. Furthermore, it must be recognized that some of these youth have particular needs as a result of their cultural background or other factors, such as health problems, and these needs must be addressed in the design of the services.

In general, the Working Group believes that the integration of enforcement efforts against customers should be coordinated with social supports for youth. An example of this model is British Columbia's Provincial Prostitution Unit, which assists police in enforcement operations

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[28] A review of charges for procuring offences from 1989 to 1993 in Vancouver revealed that 11 youth were referred to Crown for procuring charges. However, Crown approved charges in only four of these cases. More recent cases of youth charged with procuring have surfaced in British Columbia (in Vancouver and Victoria) and Nova Scotia.

targeting customers of youth. The Unit ensures that social supports are available at the time when the customer is arrested: a social worker accompanies the police and provides immediate support to the youth, talks to her about her options and where possible, ensures that she is referred to appropriate services. This immediate support not only helps ensure that the youth will feel able to testify in court, but may help her to get the supports she needs to leave the sex trade.

B. SECTION 212 OF THE *CRIMINAL CODE*: SENTENCES FOR PIMPS AND CUSTOMERS CONVICTED OF PROCURING YOUTH

Consultation participants were frustrated by what they perceived as the low sentences imposed on pimps and customers of youth. Two major factors were cited as explanations for that: the perceived lack of understanding of the courts for the impact of these crimes on youth and the lack of enforcement of certain *Criminal Code* provisions, particularly ss. 212(4).

Respondents felt that if justice personnel had better awareness regarding the exploitation and victimization resulting from prostitution, there could be more convictions and higher penalties obtained. Others pointed to the dangers associated with the courts imposing very high or mandatory minimum sentences, particularly in respect of pimps: the dangers could be passed on to youth, as pimps would have more at stake. There was also the concern that heightened criminalization of these offences could have the effect of driving youth involved in prostitution further underground.

The most common frustration expressed was that police did not have adequate powers to enforce ss. 212(4) and, as a result, many customers either were not apprehended or were charged with the less serious offence of communicating (s. 213), thus receiving light sentences (often conditional discharges or absolute discharges).[29] In certain areas of the country (e.g., Vancouver), the enforceability of ss. 212(4), before the coming into force of Bill C-27, had been identified by the community as a problem, and nearly all respondents endorsed the option of amending the subsection to make it more enforceable.

Many people felt that the current levels of sentences available for the offence of procuring youth were appropriate. Also, the actual court dispositions would be similarly appropriate if the problems just described could be addressed.

Most respondents felt that criminal sanctions against pimps and customers alone would have little effect, and that only through a multi-disciplinary approach, including increased public awareness, social interventions, and measures such as treatment or therapy for customers would a real change of behavior occur in respect of prostitution involving youth. In Saskatchewan, a mix of legal and social interventions was suggested to effectively protect the youth involved in prostitution and discourage adults from exploiting youth.

A few respondents suggested that, in any event, the provisions of the *Criminal Code* dealing with youth involved in prostitution should be repealed and that provisions in the *Criminal Code* and in

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[29] A Vancouver study found that the majority of customers who were found guilty received absolute discharges (51.2%) or conditional discharges (36%). (J. Lowman, C. Atchison, and L. Fraser, *Men Who Buy Sex*, 1996).

provincial legislation relating to child sexual abuse should be utilized. As noted earlier, Alberta's *Child Welfare Act* also makes it possible to prosecute anyone for sexual abuse, including exposing a child to prostitution related activity. The penalty is $2,000 or six months in jail or both. However, in the view of the Working Group, those who prey upon youth involved in prostitution ought to be prosecuted pursuant to the *Criminal Code*, as the offences that it contains are more serious and have more appropriate maximum penalties.

(i) Increased Sentences and Mandatory Jail Sentences for Pimps

According to Canadian Crime Statistics for 1994, there were 328 actual incidents of procuring offences, in comparison with 389 in 1993 (as opposed to 5095 incidents of communicating for the purpose of prostitution for 1994, and 8520 for 1993). It is not possible to obtain disaggregated data from the Uniform Crime Reporting Survey with respect to the offences enumerated in s. 212. Therefore, it is unknown what percentage of those procuring offences relates to youth involved in prostitution, as opposed to adult prostitutes. However, a review of cases from 1989 - 1993 in Vancouver found that of a total of 115 cases of pimping and procuring, 47 involved youth as victims. This could reflect both the actual number of pimps exploiting youth and a policy by Vancouver police to target those who exploit youth.[30]

A further complication arises from the fact that the police in some provinces do not lay the same charges under s. 212 as police in other provinces. For example, police in Nova Scotia resort to s. 212(1)(h) in respect of the offence of procuring a youth while that same pimping activity in other provinces more frequently attracts a charge under s. 212(2). Thus the report on offences committed under ss. 212(1), which applies equally to adult and youth involved in prostitution (with the exception of par. 212(1)(j)), does not differentiate which offences are committed in respect of youth, as distinct from adults, involved in prostitution.

In Alberta, courts have been imposing harsh sentences on pimps. Comparing data with those obtained from other jurisdictions, it appears that Alberta courts have been imposing the highest sentences for procuring offences. The lowest sentence of the four cases referred to for the years 1994-95 was three years, with the three other sentences ranging from seven to nine years. According to Nova Scotia data, the average sentence imposed for pimping offences would be closer to three years. In British Columbia, the sentences are slightly more than two years on average.

a) Increased Sentences

Ss. 212(1) of the *Criminal Code* lists ten procuring-related offences, such as knowingly concealing a person in a common bawdy-house or procuring a person to become, whether in or out of Canada, a prostitute. All of these offences, which apply in the case of both adults and youth involved in prostitution, carry a 10-year maximum sentence. Only the offence of living wholly or in part on the avails of prostitution of a person under the age of 18, prohibited under ss. 212(2), provides for a higher maximum sentence of 14 years, as opposed to 10 years. In its report on *Children Involved in Prostitution*, the Alberta Task Force on Children Involved in

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[30] J. Lowman and L Fraser. *Violence Against Persons Who Prostitute: The Experience in British Columbia*, 1995.

Prostitution recommended that a maximum sentence of 14 years be available for any procuring-related offence included in ss. 212(1) which involved youth.

Another issue raised during the consultations relates to the time that pimps spend in jail. Although the level of maximum penalties set out in ss. 212(1) and (2) is high when compared with other provisions of the *Criminal Code* and was felt to be appropriate, some respondents were concerned that the maximum sentences are rarely imposed.

In addition, reference was made to s. 743.6 of the *Criminal Code* which allows the judge, for listed indictable offences (Schedule 1 to the *Corrections and Conditional Release Act*), to order that an offender serve at least one-half of the sentence before the offender may be released on parole. The only enumerated offences involving prostitution are ss. 212(2) and ss. 212(4). As mentioned earlier, justice personnel in Nova Scotia mentioned that par. 212(1)(h) was more helpful to them than ss. 212(2) in prosecuting pimps of youth. As a consequence, they favoured adding par. 212(1)(h) to the list of scheduled offences under s. 743.6 of the *Criminal Code*.

In order to denounce procuring offences committed against youth in strong terms, the Working Group supports increasing the maximum sentences available for all procuring offences in respect of youth to a maximum sentence of 14 years. This would be consistent with the maximum penalty for living on the avails of a youth involved in prostitution (ss. 212(2)). Amending ss. 212(2) to effect higher maximum sentences for all procuring offences against youth would also address the concerns expressed in Nova Scotia. All procuring offences involving youth would be referred to in that subsection, which is already included in Schedule 1 to the *Corrections and Conditional Release Act*.

Obviously, there might be additional incarceration or other costs involved in making such an amendment. However, the Working Group found these costs difficult to assess since, as explained earlier, it is not possible to obtain disaggregated data that would track the different procuring offences separately or that would allow identification of the victim of such offences as a young person.

Recommendations:

> *That ss. 212(2) of the* Criminal Code *be amended to provide that all procuring offences listed in ss. 212(1) committed in respect of persons under the age of 18 be punishable by a maximum term of 14 years imprisonment.*
>
> *That the Uniform Crime Reporting Survey provide data with respect to the offences enumerated in s. 212 of the* Criminal Code *so that the number and types of these offences committed in relation to persons under 18 years of age may be ascertained.*

b) Mandatory Minimum Sentences

The Alberta Task Force recommended that mandatory jail sentences be imposed in respect of pimps having committed offences under ss. 212(1) and (2) in relation to youth. Such sentences were also suggested by those responding from Nova Scotia, Manitoba and Alberta. Those who

advocated mandatory penalties reasoned that such penalties could serve as a deterrent for pimps of youth and could address some of the sentencing disparities that appear from one province to another.

Others disagreed, especially those responding from British Columbia, Ontario and national organizations. During the latter consultations, the following points were made in respect of mandatory sentences for prostitution-related offences. First, these sentences might increase the violence directed at youth prepared to testify against pimps. Some persons believed that there was a possibility that such provisions could be struck down by the courts as being contrary to the *Canadian Charter of Rights and Freedoms*, specifically the s. 12 right not to be subjected to any cruel and unusual treatment or punishment. Finally, it was felt that these sentences would remove judicial discretion upon conviction which might cause judges to be more reluctant to convict in cases where the minimum penalty would be unreasonable, such as in the case of a 19-year-old pimp procuring for the first time a 17-year-old prostitute with no violence involved.

In the midst of the consultation process, another direction emerged. As mentioned earlier, Bill C-27 introduced a provision creating a new offence of aggravated procuring with a minimum sentence of five years imprisonment. This offence, which is now contained in ss. 212(2.1) of the *Criminal Code*, applies in the case of a person living on the avails of prostitution in relation to a person under the age of 18, who uses violence against the person under that age *and* assists that person to carry on prostitution-related activities for profit. The type of mandatory sentence created in ss. 212(2.1) addresses some of the objections of those generally opposed to mandatory sentences since added elements trigger the mandatory sentence, i.e., violence towards youth and their commercial exploitation. Hopefully, this section will serve to protect youth to some degree by preventing violence or at least punishing those who already practice it. The provision is also less susceptible to *Charter* challenges because of these aggravating elements: it is difficult to imagine a case in which the minimum sentence would not be suitable.

Although this provision creates a mandatory minimum sentence, it does have the endorsement of the Working Group as it definitely signals the community's abhorrence of such a crime by imposing a sentence commensurate with the gravity of the offence. Both public protection and the expression of public revulsion for such conduct require that the minimum time served in a correctional system be the subject of legislative rather than judicial or administrative control.

In view of the lack of agreement among respondents and members of the Working Group for other mandatory sentences, as well as the lack of evidence that such measures would be beneficial, the Working Group could not arrive at a consensus regarding additional amendments to the *Criminal Code* to effect mandatory minimum sentences in relation to procuring offences involving youth.

Recommendation:

> *That, in view of the lack of consensus concerning mandatory minimum sentences in relation to the procuring-related offences involving youth, the Working Group makes no recommendation.*

c) Increased Awareness and Training of Justice Personnel

As mentioned earlier, respondents in numerous consultations called for increased training for justice personnel on the dynamics of prostitution and, in particular, the dynamics of youth involved in prostitution. Measures could include: developing models to provide training for police, prosecutors, judges and social workers involved with these youth; encouraging provinces and territories to create strong police-Crown-child welfare partnerships to deal with prostitution cases involving youth; in cooperation with provinces and territories, developing an enforcement guide for the use of police and prosecutors in such cases; and, encouraging provincial authorities to dedicate resources to fighting child prostitution and to rigorously enforce *Criminal Code* provisions focusing on pimps and customers of youth.

While training may be of assistance, other steps can also be taken to improve the awareness and sensitivity of justice officials. Specifically, Crown Counsel can call expert testimony to inform the court on the dynamics of youth involved in prostitution. This approach has been recommended to enhance sentencing in such areas as domestic violence and street gangs.

British Columbia has undertaken to develop such measures. The Provincial Prostitution Unit has developed training strategies for police, Crown and judges regarding both innovative enforcement strategies, as well as the dynamics of the sex trade and the victimization of youth. There appears to be a beneficial result to these training sessions. Several police agencies have increased their investigation and enforcement efforts targeting pimps and customers of youth.

Recommendation:

> *That provinces and territories adopt appropriate measures to increase the awareness of justice personnel in relation to the dynamics of prostitution, in particular, the dynamics of youth involved in prostitution.*

(ii) Increased Sentences and Mandatory Jail Sentences for Customers

Ss. 212(4) prohibits obtaining, for consideration, the sexual services of a person under 18. This is an indictable offence that carries a maximum penalty of five years imprisonment. Little support was expressed for increased penalties for customers of youth. Support was slightly higher for mandatory minimum sentences for these customers from, for example, respondents in Manitoba and the Alberta Task Force on Children Involved in Prostitution. The lack of enforceability of ss. 212(4) before it was amended by Bill C-27 was mentioned as the main concern as, in certain provinces, customers of youth are infrequently arrested and convicted, largely due to problems of obtaining evidence that the offence occurred.

Therefore, it was suggested that increasing penalties for this offence would have very little impact. In general, it was felt that priority should be given to making s. 212(4) more enforceable (see paragraph iv below). The Working Group considers that the five-year maximum sentence included in ss. 212(4) should be reviewed once more is known about the impact of the recent amendment to ss. 212(4) and the creation of ss. 212(5), brought in by Bill C-27.

Recommendation:

> *That ss. 212(4) of the* Criminal Code *not be amended at this time to effect increased sentences for customers of youth involved in prostitution.*

(iii) Increased Penalties for Customers and Pimps of Youth Under the Age of 14

In Alberta, Manitoba and Nova Scotia, there was strong support for creating a new provision that would specify that all offences under s. 212 committed either by pimps or customers in respect of youth under the age of 14 carry an increased penalty, as distinct from similar offences committed against youth between 14 and 18 years of age. Specifically, in respect of customers, some respondents suggested that a separate offence of obtaining the sexual services of a person under 14 years of age should carry a higher penalty than the five years already provided for in ss. 212(4). Given the level of sentences currently available for the other procuring offences involving youth (i.e., 10 years and 14 years), less concern was expressed in relation to the sentences available for ss. 212(1) and (2) offences.

However, representatives of national organizations suggested that it was not appropriate to create different provisions in respect of youth under 14 years of age and youth between 14 and 18 years of age. They felt that creating additional offences was not the answer and that child welfare legislation should be resorted to in order to protect youth under 14. While there was strong support for increasing penalties for pimps and customers of youth under a certain age in British Columbia, many respondents argued against setting the age at 14, urging that the age of 16 would be more appropriate. This led to discussions regarding the age of consent to sex.

Currently, under the *Criminal Code*, anyone who is 14 years of age or older can consent to most forms of non-exploitative sexual conduct without criminal consequences. Many participants in the consultation, particularly in British Columbia, felt that 14 years is too young for a person to consent to sexual activity with an adult. It is notable that under s. 159(2) the age of consent for anal intercourse is higher (18 years of age). The apparently discriminatory treatment resulting from the latter provision with respect to men, particularly gay men, has been the object of public controversy. Indeed, it has been held by the Ontario Court of Appeal in *R. v. M. (C.)* (1995), 98 C.C.C. (3d) 481 that this section discriminates on the basis of age contrary to s. 15 of the *Charter* and is therefore of no force and effect in that province.

The *Criminal Code* specifies the circumstances in which a child may legally consent to sexual activity and the defences that apply to some of these offences (e.g., mistake of fact). For example, consent by complainants under 14 years of age is not a defence to specified sexual offences, including sexual interference (s. 151), invitation to sexual touching (s. 152), and sexual exploitation (s. 153). The first two offences, which apply to persons under the age of 14, are punishable by no more than 10 years on indictment, or a maximum of six months on summary conviction.

The offence of sexual exploitation (s. 153) prohibits the same type of conduct set out in s. 151 and s. 152 in respect of persons from 14 to 17 years of age, where an accused is in a position of trust or authority or where an accused is a person with whom such a complainant is in a relationship of

dependency. However, this offence is punishable only by a maximum penalty of five years imprisonment on indictment, or 6 months on summary conviction. In other discussions, some have suggested that the penalty under s. 153 should be raised to the same level as that available in the case of complainants under 14 years of age (s. 151 and s. 152), i.e., a maximum penalty of 10 years imprisonment. The proponents of this position argue that a higher maximum penalty should be available for the most serious cases involving children whether they are over or under 14 years of age.

The Working Group found merit in this argument and concluded that, subject to the discussion in respect of the previous recommendation, it could be more logical to raise the penalty under ss. 212(4) for customers of youth involved in prostitution to 10 years, rather than create a separate offence with a higher penalty where the complainant is under 14 years of age. This would allow the judiciary to exercise its discretion more appropriately. As is the case under s. 153, the latter course of action might imply, without justification, that the worst cases involving complainants between 14 and 18 years of age could not be as serious as those involving complainants under 14.

The issue of the age of consent to sexual activities will be considered together with sentencing for the protection of children in a paper being prepared by the federal Department of Justice for consultation in 1998. Given this factor and the controversy surrounding the appropriate age of consent to sexual activities, the Working Group proposes that the creation of any new offences in relation to youth under 14 years of age involved in prostitution be considered in the context of those consultations.

Recommendation:

> *As creating new offences in respect of youth under the age of 14 raises issues in connection with age of consent to sex in other sections of the* Criminal Code, *that the issue of increased penalties for customers and pimps of youth under the age of 14 await the federal discussion paper on sexual offences against children, the first phase of a project on children as victims of crime.*

(iv) Making ss. 212(4) of the *Criminal Code* Easier to Enforce

Before the passage of Bill C-27, law enforcement officials were particularly emphatic in supporting any amendment to ss. 212(4) that would make the provision easier to enforce. They were concerned that the wording included in ss. 212(4) at that time limited their ability to gather evidence to support a charge, as either the youth must be willing to testify in court regarding the transaction, including giving evidence of her or his age, or there must be solid evidence from another source of the young person's age and that he or she was offered consideration for sex. Many youth are not willing to testify because of fear of reprisals from customers and pimps. Furthermore, police were not able to execute "stings" against those who would purchase sex from youth, as the use of an adult decoy would mean that there was no purchase of sex from someone under 18.

Bill C-27 attempted to make ss. 212(4) easier to enforce by replacing that provision and adding a new ss. 212(5) to provide that, in addition to being liable to punishment for obtaining or

attempting to obtain the sexual services of a person under the age of 18, a person could also be prosecuted for obtaining the sexual services of a person whom the offender "believes is under the age of 18 years", thereby permitting the use of undercover operators.

Ss. 212(5) stipulates that evidence that the person from whom the sexual services were obtained was represented to the accused as being under the age of 18 is proof of the accused's belief to that effect, in the absence of evidence to the contrary. As the belief of the accused can be proven either by the person from whom the sexual services were obtained or by a witness to that effect, this allows for the use of an undercover operator who can represent himself or herself to the accused as being under the age of 18 years.

The Working Group recognizes that Bill C-27 is an improvement over the previous version of ss. 212(4). However, some members are still concerned that convictions will be difficult to obtain because of the requirement that the Crown prove the belief of the accused as to the age of the youth. Some members of the Working Group are also of the opinion that ss. 212(5) might be found to be contrary to the *Charter*. In its report, the Alberta Task Force on Children Involved in Prostitution favoured broadening the criteria set out in the previous version of ss. 212(4) of the *Criminal Code* to include not only a person who is under the age of 18 years, but also a person who holds himself or herself out to be under the age of 18 years.

In the course of discussions in relation to ss. 212(4), an additional concern was expressed by some members in relation to the lack of clarity of the meaning of "attempting" to obtain the sexual services of a person. In summary, it was felt that removing the words "attempts to obtain" from ss. 212(4) and replacing them by the words "communicates with any person for the purpose of obtaining" (borrowed from par. 213(1)(c)) would improve the subsection and clarify the meaning of the former words, since an attempt to obtain sexual services would appear to necessarily imply communicating for that purpose.

Such a modification has two further advantages: it allows for the use of undercover police officers, as was permitted under the amendment to ss. 212(4) brought in by Bill C-27, but no evidentiary provision similar to the new ss. 212(5) would be required. The Working Group believes that this solution would help to solve the enforcement problem of ss. 212(4) and alleviate the concerns expressed by some members of the Working Group, while respecting principles of constitutional law and sound criminal law policy.

Recommendations:

That ss. 212(4) of the Criminal Code *be amended to read:*

212(4) *Every person who, in any place, obtains or* ***communicates with any person for the purpose of obtaining****, for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years;*

and that ss. 212(5) be repealed.

(v) Youth Testifying in Court

As a final note on the issue of enforcement, the Working Group acknowledges the views of many respondents that youth should be able to testify in court without intimidation, and that measures to address this could help in ensuring that adults who sexually exploit youth are held accountable. As noted earlier, this issue has been addressed in part by the measures introduced in Bill C-27 to ease the burden for young witnesses testifying in court. That is, allowing them to testify through alternative methods such as the use of a videotape. However, based on two models that were presented during the consultations, the Working Group believes that more could be done to protect young witnesses.

Nova Scotia has developed a successful model for providing witness protection programs for youth that have assisted many of them to eventually leave the street. The Nova Scotia Task Force used a number of intermediate strategies to address the needs of potential witnesses, rather than enrolling them in a full witness-protection program. These strategies include police personally assisting witnesses to find supportive resources, assisting them in finding and moving to a new apartment, and other strategies that give the witness added security.

In November 1997, a British Columbia committee (the Victoria Task Force on Sexually Exploited Youth) recommended that police have access to a network of safe houses to protect youth testifying in pimping cases. This model would involve protocols and funding resources for transporting youth out of the community in which the crime occurred and providing them with protective housing and support. For example, a Victoria-based witness could be kept safe and hidden in another community, e.g., Prince George, for the duration of the case.

Recommendations:

> *That specialized witness protection strategies be developed by provincial and territorial Attorneys General and/or Ministers of Justice for youth involved in prostitution who are prepared to testify against pimps and customers under the prostitution-related sections of the* Criminal Code.
>
> *That no additional legislation be introduced at this time to facilitate receiving the evidence of witnesses or complainants under the age of 18 in proceedings related to prostitution offences.*

C. ALTERNATIVE MEASURES AND CHILD WELFARE STATUTES FOR YOUTH INVOLVED IN PROSTITUTION-RELATED OFFENCES

Currently, there are generally four approaches for dealing with youth involved in prostitution-related offences: police using their discretion, child welfare legislation, alternative measures under the *Young Offenders Act,* and prosecution of *Criminal Code* offences. These four approaches are not totally distinct. For example, the use of alternative measures implies that the Crown has a case which could have been prosecuted under the *Criminal Code.*

Youth involved in the offence of communicating for the purpose of prostitution (s. 213) are often in the unique position of committing a criminal offence while at the same time being victimized. Some argue that young persons, especially those under the age of 16 who engage in prostitution, are being sexually abused. Many of the experts consulted, as well as members of the public, some politicians and police,[31] say that the most effective and desirable approach to these youth is to treat them as persons in need of assistance as opposed to criminals.

The Working Group shares the perception that youth involved in prostitution should be seen as needing assistance but such assistance should be provided primarily through social services and child welfare legislation. One of the problems with youth justice issues is the tendency to invoke the criminal law process "to assist youth." The motive for bringing youth in contact with the criminal law should be primarily because an offence has been committed for which the youth should been held accountable. Getting help should not be the only reason youth are brought into the criminal justice system: this would unnecessarily criminalize them.

(i) Police Discretion

Even where a charge under s. 213 would be justified, the police, in many cases, have used their discretion not to charge youth. As mentioned earlier, sometimes the youth are taken home, or lectured by the police as to the harms of prostitution. In other cases, they are taken to shelters, social workers, or health clinics.[32] Police discretion of this type is to be encouraged.

(ii) Child Welfare Legislation

The informal use of police discretion is complemented by the authority under child welfare legislation to apprehend youth involved in prostitution as youth "in need of protection." In most provinces, legislation allows children to be apprehended because of "sexual exploitation" or "sexual abuse." Alberta child welfare legislation allows children to be apprehended for "sexual abuse" and specifically defines "prostitution-related activity" as sexual abuse. The Working Group would recommend that other jurisdictions consider prostitution-related activity a basis for apprehension of youth under their child welfare legislation.

Apprehension under child welfare legislation does not provide a complete solution to youth prostitution. In fact, many of the youth in the Victoria study who identified themselves as involved in prostitution were already "in care." The Working Group recommends that police and child welfare authorities adopt specific protocols or strategies to assist youth who have been apprehended by reason of prostitution activity.

The legislation in some jurisdictions (e.g., Ontario, New Brunswick, Nova Scotia, and Alberta) allows youth to be detained in secure treatment centers after apprehension. The Working Group does not believe that detention by itself of these young persons against their will addresses the real problem of their involvement in prostitution. If the reason for apprehension is to help the

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[31] Note police policies in Vancouver, Toronto, and Montreal.

[32] A survey of sexually exploited youth in Victoria found that police tended not to arrest youth for s. 213 offences, but took alternative actions as noted.

child, then real assistance (e.g., housing and social assistance) should be provided. If the child cannot be convinced to take advantage of lifestyle alternatives to prostitution, further detention will probably alienate him/her further and could violate the *Canadian Charter of Rights and Freedoms*.

There may be justification for longer detention against the will of the youth in situations where the youth's health is a risk to himself/herself or to the public. For example, the Ontario legislation allows detention in secure custody "if the child is suffering from a mental disorder and has caused or attempted to cause serious bodily harm to himself/herself or another person." Even with such a justification, however, detention should only occur in an extremely selective manner. Consideration must also be given to whether the services offered are realistic options for the youth. Services that are designed for youth in general may have to be adjusted to meet the specifics needs of those, for example, with ties to an aboriginal or an immigrant culture.

(iii) Prosecution Under the *Criminal Code*

In some situations, the police wish to use the more formal procedures of the criminal justice system.Here too, there are a number of options. When the formal criminal justice system is involved, the prosecutor exercises great discretion over the process. This discretion is necessary so that the individual case can be appropriately dealt with. The prosecutor should be aided in these choices by appropriate guidelines for dealing with these youth as persons in need of assistance.

Thus, the Working Group recommends that guidelines be developed for Crown prosecutors. These could be informed by the policy statement contained in the child prostitution guidelines developed by the province of Saskatchewan:

> Child prostitution is a form of sexual abuse and exploitation of children. The negative consequences both short and long term to these children, their families and their communities are significant. Children do not have a right to choose this lifestyle. Society has an obligation to protect and guide them.

(iv) Alternative Measures Under the *Young Offenders Act*

The guidelines should also encourage prosecutors to use the less intrusive methods of dealing with youth involved in s. 213 offences and to ensure that such youth are provided with assistance in cases where they would benefit from it. S. 4 of the *Young Offenders Act* allows a provincial Attorney General to authorize a program of alternative measures for dealing with young persons to be used instead of the formal criminal court system. Eligibility for alternative measures programs is largely determined in most jurisdictions by selecting certain offences for diversion from the traditional prosecution process.

The Working Group recommends that s. 213, as well other offences with which youth involved in prostitution might be charged, e.g., being an inmate of a common bawdy-house under ss. 210(2), be included among those offences for which youth may be eligible for alternative

measures. Alternative measures will usually constitute one of the least intrusive methods within the criminal justice system for dealing with youth involved in prostitution.

Alternative measures schemes vary in each province. However, the Working Group recommends that pre-charge diversion into alternative measures be implemented whenever possible for youth involved in prostitution. In addition, Crown prosecutors should be able to approve alternative measures for such youth even after a formal charge has been laid.

It may not be appropriate, however, that every youth who commits a prostitution-related offence be diverted to alternative measures programs. The discretion to place youth in the program should be left to the prosecutor. Some youth may not benefit from alternative measures, nor might these measures be appropriate for them. Indeed, before alternative measures can be approved for a youth, certain prerequisites must be met, including the consent and admission of responsibility by the youth for the offence. Some youth may not wish to take such responsibility; others may not wish to participate because they find alternative measures too onerous. Those who are approved for alternative measures may benefit from a program in which supervision and/or community service work may be required.

There will no doubt be youth who will not profit from any of the previous options or choose to take advantage of them. In those cases, there may be little choice but to charge them and proceed to trial. Even when this is necessary, guidelines should encourage prosecutors to consider probation as the best sentencing option when the youth might benefit from the supervision of probation authorities.

Recommendations:

That youth involved in s. 213 related offences be dealt with by child welfare and criminal justice systems as persons in need of assistance, as distinct from being treated as offenders.

That the police continue to exercise their discretion, whenever possible, not to charge youth involved in s. 213 offences.

That provincial guidelines be developed to educate and assist Crown prosecutors in the exercise of their discretion with respect to youth involved in prostitution; that such guidelines encourage Crown counsel to treat youth involved in prostitution as persons in need of assistance.

That provincial/territorial jurisdictions review, and amend if necessary, their respective child welfare legislation to make prostitution-related activity a basis for apprehension of youth, but that apprehended youth not be detained against their will, except in specific, statutorily-defined circumstances relating to the health or safety of the youth or other persons.

That the provinces and territories, with the assistance of the federal government, improve the level of services which deal specifically with youth involved in prostitution by

developing interdisciplinary protocols involving participation of representatives from child welfare, the police and the Crown;

- *that such protocols be informed by the view that youth involved in prostitution are often victimized and accordingly should include guidelines for the appropriate handling of youth involved in prostitution by social service agencies, police and the Crown;*
- *that such protocols integrate practices and policies under child welfare and criminal legislation in order to address in a comprehensive and coherent manner the specific needs of these youth which may be contributing to their involvement in prostitution, e.g., provision of social assistance, appropriate counselling, safe housing, etc., before professionals dealing with these youth resort to criminal justice intervention;*
- *that such protocols make criminal justice intervention a last resort for dealing with youth involved in prostitution.*

That provinces and territories develop special "alternative measures" programs designed exclusively for youth involved in prostitution to be implemented under s. 4 of the Young Offenders Act, *preferably as part of pre-charge diversion of these youth from the criminal justice system; such programs should specifically address the special needs of these youth for counselling, life skills, safe housing, job training and drug rehabilitation and accommodate youth with aboriginal or ethno-cultural minority backgrounds.*

D. SOCIAL SUPPORTS FOR YOUTH: PREVENTION, HARM REDUCTION AND EXIT SUPPORT

The Working Group recognizes that criminal sanctions, alternative measures or child welfare legislation, in many cases, are not the best or only method to deal with the issue of youth involved in prostitution. Society should first seek to prevent youth from becoming involved in the sex trade. If they do become involved, it is essential that services be offered to reduce the harms of the sex trade and to provide support for youth exiting the sex trade.

Research and consultations suggest that access to appropriate services, personal support from a caring adult or peer, counselling for personal and family problems, substance abuse treatment, anger management or life skills training would have been of benefit to some youth in preventing them from becoming involved in prostitution, or reducing some of the factors that kept them in prostitution.[33]

(i) Prevention

In many cases, early social intervention could have prevented the impact of risk factors (e.g., family dysfunction, physical and sexual abuse) which may have led to a youth becoming involved in prostitution. Counselling or medical treatment may be needed to deal with psychological difficulties associated with physical or sexual abuse or other problems such as drug or alcohol dependency.

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[33] See for example, the Victoria study of sexually exploited youth, 1997.

Youth may become involved in prostitution activities without being fully aware of the consequences. Education programs about the realities of prostitution could therefore prevent some youth from entering this lifestyle. Public education may also decrease the tolerance for men who exploit these youth. In British Columbia, Alberta, Saskatchewan, and Nova Scotia, programs portraying the procurement of youth for sexual purposes as child sexual abuse appear to have been relatively successful in changing public attitudes.

Those closest to youth, including parents, teachers, and peers, can play a vital role in identifying those who are at risk of involvement in prostitution and intervening effectively. Specific educational tools and resources have been developed in some jurisdictions. For example, *Being Aware, Taking Care* is a guide for parents, teachers and caregivers developed in British Columbia to provide information on the dynamics of the sex trade, indicators that a youth may be becoming involved, and strategies to assist youth.

(ii) Harm Reduction

Outreach workers who are familiar with the dynamics of prostitution can be effective in linking youth involved in prostitution to services that may reduce the harm caused by the sex trade. These workers should be familiar with the needs of specific youth, including aboriginal youth, immigrant youth, young males, and transgendered youth, depending upon the characteristics of the youth who are involved in prostitution in any specific community. Outreach workers can not only play a role in connecting youth to programs that could address disease or substance abuse (two of the more serious harms experienced by youth involved in prostitution) but to the police as well, a linkage that may be critical given the frequency of physical and sexual assault against these youth.[34]

Youth involved in the sex trade are particularly susceptible to contracting sexually transmitted diseases (STDs).[35] A study of sexually exploited youth in Victoria found that many of the youth possessed a Health Care Card (80%) and 39% had a health care specialist; however, females were significantly more likely to access health care services than males. Youth reported that they used a particular clinic or specialist because they were dealt with in a friendly and non-judgmental manner.

There is some indication that youth involved in prostitution do obtain health care for STDs. For example, 65% of the youth in the Victoria study had been tested for STDs at some time in their lives and a study of young street prostitutes in Ottawa found a somewhat higher percentage (89%) had been tested for STDs and knew the location of the STD clinic.[36] It is important to note

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[34] A survey of sexually exploited youth in Victoria found that many youth had been either sexually assaulted (33%) or physically assaulted (28%) in the past year.

[35] A survey of sexually exploited youth in Victoria found that youth under 18 were significantly less likely to use condoms than were those over 18, and the older youth were more likely than youth under 18 to report that they used condoms "always." (From: *A Consultation with 75 Sexually Exploited Youth in the Capital Regional District (CRD) of British Columbia*, 1997.)

[36] The Ottawa study of street prostitutes (previously cited).

that many youth appear to be accessing health services if they are available. This demonstrates the need to ensure that these services (information, prevention measures and treatment) are accessible in order to maintain the health of youth involved in prostitution as well as minimizing the danger of transmitting sexually transmitted diseases. Such services should include the distribution of free condoms, peer education and voluntary testing opportunities.

Substance abuse has been cited as one of the factors that leads youth to involvement in prostitution and keeps them involved. The type of substance abuse and the frequency of substance usage appears to vary in different parts of the country. For example, the Victoria and Ottawa surveys found that marijuana, hashish, alcohol and cocaine were the most commonly used, although the Victoria survey found a much higher level of use of these substances and other more serious drugs (e.g., heroin).[37] A Saskatoon study of street youth, some of whom were involved in prostitution, found that substance abuse tended most commonly to be glue and gasoline sniffing and marijuana use, although other substances such as LSD were also used. This suggests that it is important that the more serious harm from drug use be addressed by appropriate programming (e.g., information about intravenous drug use) and that treatment, in the case of a crisis such as an overdose, should be accessible at all hours.

The availability of social services must be communicated either directly through street workers and agencies or by public awareness campaigns designed to reach youth. Networking and information exchange between agencies and organizations dealing with prostitution strengthens the chances of such information reaching the youth on the street. Although it is important to maintain communication with youth who are involved in prostitution, some agencies have reported that their success rate in doing so is usually low. In some cases, this may be due to the lack of training of the agency staff in dealing with these youth, or the lack of availability of services during the hours that the youth could use these services. Cultural factors also need to be addressed: for example, aboriginal youth may be more comfortable talking to an aboriginal outreach worker. In a number of cities (e.g., Vancouver and Regina) aboriginal outreach workers have had successful experiences in contacting aboriginal youth involved in prostitution and assisting them in getting appropriate services.

(iii) Exit Supports

During the consultations, some youth, police and service providers reported that youth feel a primary connection to other street youth until they experience a critical event such as the death of a significant other, being arrested, being imprisoned, or being physically harmed by a pimp or others. It is particularly important that services be available in such time of crisis, as this may be the point at which the youth could decide to leave prostitution.

Networks should be established between organizations dealing with youth involved in prostitution and government departments to ensure that there are programs and services available to assist this exiting process. Only when there is adequate support for youth who wish to leave the sex trade, is leaving the street a viable alternative with an appropriate chance of success. It does little good to convince youth to leave the street life and then abandon them. Residential

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[37] Note that the Ottawa and Victoria surveys of youth involved in prostitution included persons above the age of 18.

facilities developed as safe houses should be established with culturally appropriate programming to deal with the problems outlined above.

There are a variety of programs presently in effect to deal with youth involved in prostitution. The knowledge of what has been attempted, and especially what has proven successful, is valuable and may help other jurisdictions. Each jurisdiction should be aware of successful programs so that these models might be adapted to meet the specific needs of their jurisdiction. The Working Group recommends that the federal government serve as a clearinghouse for the evaluation of programs which have been successful and disseminate this information.

Recommendations:

That the provinces and territories, with the assistance of the federal government, improve the level of services that deal specifically with youth involved in prostitution or at risk of such involvement, including those youth who, for reasons of culture or other factors, have difficulty accessing current services. This should be addressed by developing:

a range of programs to deal specifically with youth involved in prostitution, or at risk of such involvement, from prevention and awareness, to harm reduction and exit programs, including:

- *education programs about the realities of prostitution for youth and the general public;*
- *specialized outreach programs that employ workers knowledgeable about the sex trade;*
- *drug and alcohol abuse programs;*
- *counselling for physical and sexual abuse, both recent and historical;*
- *treatment and counselling for sexually transmitted diseases;*
- *housing; and,*
- *training and employment programs to assist youth wishing to leave the sex trade;*

residential programs for youth involved in prostitution which could be accessed voluntarily by them and which would specifically address needs for counselling, life skills, safe housing, job training and drug rehabilitation;

best-practice models for services to youth involved in prostitution:

the federal government act as a clearinghouse for the evaluation of programs that have been successful in providing effective services in the provinces and territories to youth involved in prostitution, with a view to dissemination of information to all provinces and territories concerning best practices, to deal with the problem of youth involved in prostitution and permanent implementation of these practices in every province and territory.

PART III - STREET PROSTITUTION

Research and consultation provide a basis for information on the key players in street prostitution in Canada: those who sell sex, those who buy, and those who procure or live on the avails of prostitution.

Women who sell sex appear to outnumber males.[38] As estimates of the number of females and males involved are usually dependent upon arrest statistics, the gender difference may be exaggerated by police enforcement practices, such as a reluctance to 'sting' males who sell sex. Although the percentage of youth who sell sex is dealt with in the previous section, it is clear that those who sell sex on the street also include youth.

The profile of prostitutes varies from city to city. Research on street prostitution indicates that who are arrested for selling sex on the street are primarily Caucasian in Halifax, Montreal, Toronto, Vancouver and Calgary, whereas aboriginal people are much more common in Winnipeg and Regina.[39] Aboriginal prostitutes are also over-represented, compared to the population of the area, in Vancouver. In considering this research, one has to keep in mind that the arrest statistics reflect not only the number of people engaged in street prostitution but the particular vulnerabilities of certain groups, such as aboriginal people, to enforcement operations.[40] The same research found that few of the prostitutes were immigrants: for example, in Toronto, 17% were born outside of Canada, in Halifax 12%, and in Montreal 15%.

Profiles of customers are more difficult to obtain. Perhaps the most comprehensive profile is obtained from the study of men who buy sex in the lower mainland of British Columbia. The average age of these men was 34, most (78%) were under the age of 41, 84% were citizens, 53% were Caucasian, and most (36%) worked in blue collar occupations. This information can be compared to studies of street prostitution noted earlier. For example, in Toronto,[41] arrest statistics indicated that 60% of customers were born outside of Canada, 23% were identified as 'non-white,' 86% were employed and, of these, approximately one third worked in unskilled or blue collar occupations.

People who are arrested under the pimping and procuring (s. 212) provisions of the *Criminal Code* are primarily younger males.[42] However, in some cases, females are also known to operate as pimps, although less often and usually as an agent for a male pimp. One female arrested for living on the avails of a youth in Halifax was 'pimping' the youth in an effort to make her quota

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[38] See for example, A. Brannigan, L. Knafla, and C. Levy. *Street Prostitution: Assessing the Impact of the Law, Calgary, Regina, Winnipeg.* Department of Supply and Services Canada: 1989.

[39] From the series of studies published in 1989: *Street Prostitution: Assessing the Impact of the Law: Vancouver, Calgary, Regina, Winnipeg, Toronto, Montreal and Halifax.*

[40] Lowman suggests that it is not possible to tell from police arrest statistics whether the number of Native women arrested reflects how many work the street or whether the statistics reflect the vulnerability of Native women to law enforcement efforts.

[41] Moyer and Carrington. *Street Prostitution: Assessing the Impact of the Law: Toronto.*

[42] See for example, *Street Prostitution: Assessing the Impact of the Law: Toronto*; and *Street Prostitution: Assessing the Impact of the Law: Halifax* (both previously cited).

with her own (male) pimp. This raises the issue of defining who is a 'pimp.' In many cases, women will say that the person who police may see as their pimp is, instead, a boyfriend.[43]

There is little doubt that the street is a particularly dangerous place for prostitutes. Research indicates a relationship between victimization of prostitutes, including assaults and homicides, and the venue of the sex trade. Nearly all assaults and murders of prostitutes occur while the prostitute is working on the street (Lowman and Fraser, 1995). Street prostitution often involves women getting into vehicles with strangers and travelling to remote areas, which is very risky. There have been few known murders of prostitutes who work indoors. In British Columbia, for example, only two of the 50 women who were murdered and identified as sex trade workers since 1982, worked indoors as escorts; six were cabaret dancers (1995).

Street prostitution has also been identified as a major nuisance problem in many Canadian cities. Residents and businesses have voiced concern over the noise and traffic as well as the associated drug trade and its violence. In residential neighbourhoods, people are offended by street prostitutes who openly solicit customers. Residents and their children may be exposed to litter from both the sex and drug trades and to intrusions onto their property.

The clear direction emerging from the consultations was that strategies related to street prostitution should have two major objectives: reduction of the harm to communities; and the prevention of violence toward prostitutes. The challenge to developing effective strategies is to reconcile the apparent conflict in these two objectives. Reducing the harm associated with street prostitution requires a decrease in the visibility of prostitution-related activities. Generally, this amounts to the displacement of prostitution-related activities to less visible and more remote areas, and this could increase the risk of violence to prostitutes.

Results of the research and the consultations suggest that the two objectives of harm reduction and violence prevention could most likely occur if prostitution was conducted indoors. Indoor establishments appear to provide some protection to prostitutes as well as decreasing the level of street prostitution and its associated harm.

This section of the report outlines two general strategies for addressing the problem of street prostitution: legislation and community responses. A number of mechanisms for improving the enforceability of current *Criminal Code* provisions on prostitution-related offences are discussed. Support for prostitutes testifying in court and assistance to those who wish to leave the sex trade are considered.

Many communities are exploring strategies outside the criminal justice system to address prostitution-related problems. Citizens' and local organizations which have embraced the notion of community ownership of problems affecting their neighbourhood have mobilized to implement innovative solutions. Such involvement requires the active participation of all organizations and agencies, a realistic analysis of the situation, the development of a plan of action, sustainability and maintenance, and the provision for educational opportunities.

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[43] Lowman and Fraser. *Street Prostitution: Assessing the Impact of the Law: Vancouver* (previously cited).

The strategies for mobilizing communities are addressed along with alternatives for targeting customers and neighbourhood concerns. Finally, the authority to regulate prostitution is also discussed.

A. *CRIMINAL CODE* APPROACHES

(i) Enforcement

An effective enforcement approach to prostitution involves the use of the *Criminal Code* and an understanding of the unique situations of persons involved in prostitution.

Communicating for the purpose of prostitution (s. 213) is the most commonly prosecuted prostitution-related offence, however statistics reveal some important differences between prostitutes and customers who have been arrested under s. 213 or the previous soliciting offence. Prostitutes are more likely to have previous charges and convictions than customers. For example, a review of files in Vancouver in 1987[44] found that 75% of prostitutes had criminal records, compared to 24% of customers. A difference was also found when only prostitution convictions were considered: 29% of prostitutes and approximately 1% of customers had previous convictions for soliciting.[45] These statistics are easily questioned, particularly in terms of whether they reflect the actual recidivism rate of customers.

It is difficult to identify repeat offenders or tracking those involved in prostitution, as fingerprinting and photographing of persons charged with s. 213 offences is not possible under present legislation. Two options are considered in that respect: the hybridization of s. 213; and the fingerprinting and photographing of those charged with this offence. The problem of the appropriate penalties for those charged under s. 213 is also considered.

Another prostitution-related offence is s. 212 (procuring). Evidence to convict under s. 212 is often difficult to obtain as prostitutes are reluctant to testify for a host of reasons, including fear and intimidation. Viable tools such as specialized witness protection programs, the interception of private communications for prostitution-related offences, and penalties under s. 212(1) are evaluated in terms of their usefulness in assisting the criminal justice system to address these issues. In addition a model for a High Risk Homicide Registry, which can assist in investigating murders of prostitutes, is described.

a) Fingerprinting and Photographing Persons Charged Under s. 213, Whether as Prostitutes or as Customers

At the present time, police cannot fingerprint and photograph customers or prostitutes charged under s. 213 of the *Criminal Code*. The offence is classified as one punishable on summary conviction, and the *Identification of Criminals Act* only permits the fingerprinting and photographing of persons accused of indictable offences, which are defined to include hybrid offences pursuant to the federal *Interpretation Act*. During the consultations, it was argued that the

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[44] Lowman and Fraser. *Street Prostitution: Assessing the Impact of the Law: Vancouver* (previously cited).

[45] A more recent study indicates a recidivism rate of 1.3% for customers: Lowman, Atchison and Fraser, 1996.

failure to fingerprint and photograph permits repeat offenders, whether customers or prostitutes, to escape accountability as recidivists by using false identification. Respondents in the consultations maintained that enhanced identification of offenders under s. 213 would permit tracking of re-offenders for the purpose of ensuring that appropriate, presumably higher, penalties could be imposed on recidivists, especially customers of prostitutes, and thus have a deterrent effect on their activities. Police also believed that tracking prostitutes themselves, including youths, would allow them to put such persons in touch with community services.

It was suggested that one way of responding to these concerns would be to amend either the *Criminal Code* or the *Identification of Criminals Act* in order to permit fingerprinting or photographing of those charged under s. 213. Most of those favouring more effective identification mechanisms felt that s. 213 should be made a hybrid offence, as opposed to amending the *Identification of Criminals Acts,* since the latter Act does not currently apply to any summary conviction offences. They believed that making a specific reference to a single summary conviction offence (i.e., communicating for the purpose of prostitution) in the *Identification of Criminals Acts* would be anomalous.

Making the offence under s. 213 a hybrid one would allow the Crown to proceed either by way of summary conviction or by indictment on trials against charged parties. Thus, hybridization of s. 213 appears to be a controversial step, as it results in the creation of a more serious offence than one that is exclusively summary. The arguments for and against hybridization are set out below.

Perception of the gravity of the offence of street prostitution

Consensual conduct between two adults ordinarily should not attract legal sanction. Prostitutes' rights groups, most women's advocacy groups, and certain social agencies argue that this reasoning should apply to prostitution, other than that involving a young person. When prostitution occurs in a public place, however, it creates a nuisance to the public, which is sanctioned under s. 213 of the *Criminal Code,* as has been recognized by the Supreme Court of Canada. It is further argued that, since street prostitution has long been treated as a summary conviction offence and as nothing has changed in Canadian society to warrant treating it more seriously at this time, the Crown should not be allowed to prosecute it by indictment. Street prostitutes and customers currently are being diverted from criminal courts in some parts of the country, which suggests that the offence is not considered very seriously by members of the administration of criminal justice where such diversion programs exist.

Others insist that societal attitudes about street prostitution have changed sufficiently in Canada to justify reclassification of the offence under s. 213 as hybrid. This view is held most strongly by those whose neighbourhoods have been affected by street prostitution. As discussed previously, many respondents attributed the rise of street prostitution to increased demand and called for harsher treatment of customers to reduce street prostitution and its attendant harms. In this light, hybridization of s. 213 seems to accord with the increased seriousness with which this offence is currently viewed by those members of the public.

Enhancement of law enforcement in relation to prostitution

The Canadian Association of Chiefs of Police Law Amendments Committee has called for the offence under s. 213 to be hybridized. Pursuant to the arrest provisions of the *Criminal Code* in respect of summary conviction offences, police cannot arrest suspects for the offence under s. 213 unless they *find* a suspect *committing* the offence. This limits the nature of police enforcement of the offence to expensive undercover investigations which enable police to find offenders in the act of committing the offence. Conversion of s. 213 to a hybrid offence would allow police officers to arrest under a lower threshold, i.e., *reasonable grounds* to believe that a s. 213 offence has been committed or is about to be committed. There could then be a greater scope for enforcement of s. 213, which might provide more cost-effective policing in respect of street prostitution by uniformed officers patrolling their neighbourhoods.

Opponents of hybridization argue that better enforcement possibilities do not justify making the offence under s. 213 more serious; that the minor nature of prostitution offences does not require an increase in police arrest powers. Some argue that such arrest powers would bring the offence closer to the old vagrancy provision of the *Criminal Code*, a status offence which allowed a person to be arrested for being a prostitute rather than for her particular activities.

Impact of hybridization on customers

Proponents of hybridization argue that this option will finally address the inequities in treatment by the justice system of prostitutes *vis-à-vis* customers by breaking down the wall of anonymity behind which customers of prostitutes have traditionally been able to operate, bringing about greater accountability by customers for their participation in public prostitution.

Most police forces keep their own records of all local arrests, charges and convictions, regardless of the type of offence. However, for the purpose of criminal records, police maintain a distinction between non-indictable (including summary conviction) offences and indictable offences. Charges and convictions for the latter are entered at the Canadian Police Information Centre (C.P.I.C.) which can be accessed by all police forces across Canada. Only charges or convictions for indictable offences which can be verified by fingerprints and photographs may generate an original entry onto C.P.I.C.

Local customers who have never been arrested for an indictable offence, and whose names are not on C.P.I.C. because they have never been fingerprinted or photographed, may elude identification as repeat offenders by providing a different name or false identification to police when they are charged again in their own municipalities. Alternatively, they may seek out prostitutes in other jurisdictions policed by different forces who have no local criminal records on them. While police routinely check the names of all arrested parties through C.P.I.C., they rarely attempt to determine the existence of criminal records for non-indictable offences outside their own jurisdictions.

Hybridization of s. 213 would bring about routine photographing and fingerprinting for persons charged under that section, thereby resulting in identification by the police of all repeat offenders. Hybridization would mean that customers of prostitutes charged under s. 213 could not avoid court by routinely appearing through agents, permitted under s. 800(2) of the *Criminal Code* for those

charged with summary conviction offences. Customers would be required to attend in court personally, similar to other individuals charged with hybrid offences, until the Crown elected to proceed summarily on the charge.

Better identification of repeat offenders likely will lead to higher sentences for re-offending customers upon conviction. This could have implications for general deterrence of this offence. Fingerprinting and photographing also convey the message both to the offender and the community that the offence is serious enough to cause the police to make such identification records for future enforcement purposes. Fingerprinting and "mug shots" are popularly associated with criminality: their association with the customers of prostitutes corresponds to a public perception of such individuals as offenders contributing to a serious community problem.

Those who oppose hybridization of s. 213 argue that low recidivism rates among customers do not warrant increasing the seriousness of the offence for the purpose of general deterrence. Vancouver statistics indicate, for example, that from 1986 to 1992, 2,045 men were charged as customers under s. 213 and only 44, or 2%, of these men were recidivists (Lowman, 1996). However, proponents of hybridization counter that recidivist statistics are unreliable since modern identification techniques in respect of these offenders are not utilized. Canada's present failure to generate accessible and credible records of conviction for the customers of prostitutes arguably undermines the reliability of social science research purporting to draw conclusions about the recidivism rate of this offence as recidivism statistics based only on offender self-identification or locally-maintained criminal records, unverified by fingerprints and photographs, are susceptible to inaccuracy.

Meanwhile, those who oppose hybridization argue that better record keeping by the police cannot justify making the offence under s. 213 more serious than it merits. They also insist that using fingerprinting and photographing as a form of "shaming" constitute an abuse of these processes for an offence which is essentially minor.

The trend toward reclassification of Criminal Code *offences*

Those who oppose the hybridization of s. 213 contend that the move to reclassify *Criminal Code* offences as hybrid is intended to allow the Crown to proceed *summarily* on a number of offences that are currently indictable. Thus, it would appear to be inconsistent to make a summary offence into a hybrid offence. Furthermore, even if the Crown were to be allowed to proceed by indictment, it is doubtful that any fact situation grounding a charge under s. 213 would warrant a prosecution by indictment. It is also questionable whether the penitentiary term that would be available upon conviction where the Crown proceeded by way of indictment could be justified. Present offenders under this section, far from receiving the maximum six months incarceration presently permitted for a summary conviction offence, are rarely incarcerated at all.

Those who support hybridizing the offence under s. 213 draw a parallel with the reclassification of *Criminal Code* offences, and argue that it would be a good idea to give Crown Counsel more discretion in determining how charges are to proceed through the court system. Within this context, it would be consistent to reclassify the offence under s. 213 as a hybrid offence to effect the same status as most other offences in the *Criminal Code*. This would still allow the Crown to proceed by

way of summary conviction proceedings on the majority of charges under s. 213, as is presently the case with other less serious examples of hybrid offences such as assault, theft under (shoplifting) and impaired driving.

However, in those cases where the Crown considered the commission of the offence to be more serious than usual, involving, for example, a customer with many convictions for prostitution-related offences, the Crown would have the option of proceeding by indictment. Upon conviction the Crown would then be able to ask for a sentence that met the need for specific deterrence, including a custodial term that might exceed the present six month maximum available for summary conviction offences. Since statutory maximum sentences are reserved for the most serious offender committing the most serious form of the offence, most customers have rarely received imprisonment sentences even approaching six months. However, the accepted range of custodial sentences for prostitution recidivists would be expected to increase upon a corresponding increase in the maximum sentence available for the offence.

Impact of hybridization on prostitutes

Opponents of hybridization of s. 213 perceive that hybridization would operate more adversely against prostitutes than their customers, further criminalizing and victimizing the former group. It is maintained that prostitutes, and not customers, will accrue more convictions for the indictable form of the offence under s. 213 and thereby spend more time in jail serving longer sentences. It is also contended that prostitutes will be denied bail more frequently.

Supporters of hybridization suggest that while prostitutes and customers *appear* to attract equal treatment within the justice system by being equally liable to charges for the same summary conviction offences under the *Criminal Code*, this is not really the case. They argue that, in fact, prostitutes are frequently charged with more serious non-prostitution offences, which cause them to be fingerprinted and photographed early in their careers, as herein explained.

Many prostitutes do not carry identification when they work the streets. They commonly give false identities when first charged by police. Because of the less serious nature of s. 213, offending prostitutes who are not wanted by the police on other charges usually are issued appearance notices, which allows them their liberty but requires them to appear in court on a specific day. Unfortunately, many prostitutes fail to attend court when required to do so. This may be due to fear, inconvenience, a perceived threat to their livelihood or other factors.

Failure to appear in court results in the presiding judge issuing a bench warrant for the arrest of the offender. When prostitutes are arrested on the bench warrants they are charged with the serious offences of obstructing police or attempting to obstruct justice for giving false identities, and failure to appear in court, all offences for which police may photograph and fingerprint.

The charge of failing to appear in court requires police to detain the accused prostitute in jail, pending a bail hearing in which the accused bears the onus of showing cause why she should be released from custody before trial. Without roots in the community, including a surety who might post bail, the charged prostitute may be detained in custody until trial, or may be fearful of this happening. To avoid spending as little "dead time" as possible in pre-trial custody, the offending

prostitute will often plead guilty to al' charges at an early court appearance, frequently without the assistance of private defence counsel who could negotiate a more advantageous resolution of the charges for her with the Crown.

The short-term gain to the prostitute of an early guilty plea is the quick disposition of the charges which allows her to start serving a jail sentence immediately and then get back on the street to her livelihood in the shortest time possible. The long-term disadvantage to her is, however, the generation of convictions for serious offences which will hamper her future ability to obtain bail and guarantee ever harsher sentences, including incarceration, for future offences. Repetition of this common cycle leads to the early accumulation by prostitutes of fairly serious criminal records and relatively severe sentencing even though they may be quite young adults.

Supporters of hybridization argue, therefore, that the requirement of fingerprinting and photographing of persons charged under s. 213 would bring about the desired effect of making *customers* of prostitutes more accountable, as discussed above, while not greatly affecting the *status quo* in terms of the treatment of prostitutes themselves within the justice system. The latter already tend to be photographed and fingerprinted and severely sentenced for offences not related to prostitution, but to false identification and missed court appearances.

There are many compelling arguments in favour of photographing and fingerprinting those charged with offences under s. 213. The Working Group acknowledges these arguments as significant to addressing the problem of nuisance associated with street prostitution. However, members of the Working Group continue to be concerned about the discriminatory impact on prostitutes, most of whom are women, of hybridization of the offence under s. 213. Participants in the consultation generally perceived that prostitutes currently are treated more harshly by the police and are more severely sentenced upon conviction under s. 213 than are the customers of prostitutes. Police also noted that it is easier to conduct "sting" operations to apprehend those who *sell* sex rather than those who *buy* sex. Meanwhile, few police agencies target male prostitutes for various reasons, including the higher violence anticipated in dealing with such offenders and the use of undercover officers posing as homosexual customers.

Most members of the Working Group feared that upgrading the seriousness of the offence under s. 213 through hybridization would result in even harsher penalties and increased denial of bail for female prostitutes in contrast to male prostitutes or customers, thus perpetuating discrimination in the criminal justice system on the basis of gender. Greater criminalization of these women could further entrench them unfairly in street life. The concerns regarding the discriminatory use of the offence outweighed the Working Group's view of the seriousness of the offence and holding customers accountable for the offence.

The Working Group recognizes that the arguments for fingerprinting and photographing customers could equally be used for amending the *Identification of Criminals Act*. As mentioned earlier, an argument against this approach is that specific reference to a single summary conviction offence (i.e. communicating for the purpose of prostitution) in the *Identification of Criminals Act* would be anomalous. This could be countered by reference to the nature of the offence, which is itself unique, because, unlike other summary conviction offences, people involved in prostitution offences use false identification more often and have a degree of mobility not common to other

offences and may even enter the country to commit the offence. As is the case with hybridization of s. 213, amending the *Identification of Criminals Act* would also decrease the misidentification of prostitutes, because their identity would be ascertained through fingerprints and photographing. This in turn could decrease the incidence of 'failure to appears' and 'attempts to obstruct justice' charges.

However, others argue, as they did with the hybridization of s. 213, that the impact of this would have a disproportionate impact on prostitutes. Better identification of prostitutes as well as customers will allow the court to sentence repeat offenders on the basis of more accurate information, thereby increasing sentences. On the other hand, it is possible that prostitutes are already receiving penalties at the higher level allowed under s. 213, and the impact would be to equalize the penalties between prostitutes and customers.

Recommendations:

The Working Group could not arrive at a consensus regarding the reclassification of the offence under s. 213 as a hybrid offence.

The Working Group could not arrive at a consensus regarding an amendment to the Identification of Criminals Act *to allow for fingerprinting and photographing of those charged under s. 213 of the* Criminal Code.

b) Protection of Witnesses Testifying in Court

Evidence in prostitution-related offences is difficult to obtain and, even where obtainable, is resource intensive. The consultation raised issues relevant to the problems of obtaining evidence in relation to such offences. The offence most frequently prosecuted is communicating for the purpose of prostitution (s. 213 of the *Criminal Code*). In such cases involving adults involved in prostitution, undercover police officers can testify about being illegally solicited for prostitution purposes. Almost all prosecutions under this section are based on police undercover.

Evidence is more difficult to obtain for other offences such as ss. 212(1), procuring, and, as mentioned earlier in the section dealing with youth involved in prostitution, ss. 212(4), obtaining sexual services of someone under 18. In order for a person to be convicted under these subsections, there may be no choice than having the prostitute testify.

Prostitutes are reluctant to testify against their pimps since they are often intimidated by threats of reprisals. There are numerous reports of prostitutes who have been beaten after testifying against their pimp. This is particularly true in the case of youth. Police have reported that pimps commonly arrange associates to attend court for intimidation. In addition, prostitutes may also not wish to testify against their customers, particularly if they intend to stay in the sex trade. Where they do testify, their court appearance can be difficult as they can be subjected to severe attacks on their credibility because of their lifestyle.

Many of the witnesses who would testify in such cases would be women who experience intimidation as a result of power differences for a variety of reasons (gender, financial,

insecurity, threats of violence). Strategies for protection of witnesses would help equalize this power differential and may assist women in becoming less subject to the control of a pimp or his associates.

Some consultation participants, especially in Alberta, were of the view that some of the measures designed to facilitate the testimony of youth in court (i.e. videotaping, use of screens, support services) should be available to adult prostitutes. The first two strategies would require an amendment to two sections of the *Criminal Code*: ss. 486(2.1) and s. 715.1.

Ss. 486(2.1) allows witnesses under the age of 18 years or any witness who has a mental or physical disability to testify from behind a screen or by means of closed-circuit television from outside the courtroom if the trial judge is of the opinion that these evidentiary aids are "necessary to obtain a full and candid account' of an alleged offence from the witness. The latter section, s. 715.1, allows for a videotape of a child witness' description of an offence to be introduced into evidence in criminal proceedings for certain offences under certain conditions. The videotape must be made within a reasonable time after the offence and the child must still be available to testify for the purpose of adopting the contents of the videotape. These provisions have proven somewhat successful in obtaining evidence from certain vulnerable witnesses.

Presently, child witnesses or complainants can resort to these sections where the accused is charged under any of the prostitution-related offences. These sections are rarely used, however, for two reasons: it can be difficult to meet the requirements imposed by these sections and it is generally the preference of prosecutors to have witnesses testify in the ordinary manner as this tends to enhance their testimony. Nonetheless, where they have been resorted to, they have served to reassure those witnesses to enable them to give their testimony.

In many cases, adult prostitutes feel intimidated in giving their testimony due to the presence of the accused or his friends in the courtroom. In those cases, it is the view of the Working Group that the screen or out of court testimony allowed by ss. 486(2.1), as well as the possibility of videotaped evidence referred to in s. 715.1 might allow "a full and candid account" of the offence. To enable this to be done, the age qualification of 18 would have to be deleted and a new ground for the granting of the order based upon "intimidation, fear or fright" would need to be added.

Some might argue that the need for evidentiary aids such as screens, closed-circuit television, and videotaped evidence is not as compelling for adult witnesses as for child witnesses. Nonetheless, the Working Group believes that the dynamics of prostitution, especially where pimps are involved, significantly interferes with the ability of complainants and witnesses to testify against these individuals. Courts trying procuring offences involving witnesses who have a very real fear of the pimps or customers who are charged or implicated in the proceedings are more likely to obtain a "full and candid account' of the offences from these witnesses where their testimony is facilitated through the use of evidentiary aids under ss. 486(2.1) and 715.1. The benefits of these sections should therefore be extended to this class of witness.

As indicated in the section dealing with youth involved in prostitution, participants unanimously supported the provision of witness protection programs for youth wishing to testify against their

pimps or customers, and a number of respondents felt that programs similar to the Nova Scotia model should be available for adults. However, representatives from the police mentioned that additional funds would be required if full witness protection programs are used, as these programs can be quite expensive (approximately $50,000 per witness). However, they felt that the implementation of witness protection strategies could help in countering the reluctance of prostitutes to testify against their pimps or other prostitutes because of fear of intimidation or reprisals.

Recommendations:

> *That specialized witness protection strategies be developed by provincial and territorial Attorneys General for adults and youth involved in prostitution who are prepared to testify against pimps and customers under the prostitution-related sections of the* Criminal Code.
>
> *That ss. 486(2.1) and s. 715.1 of the* Criminal Code *be amended in order to allow the use of screens, out-of-court testimony and videotaped evidence to facilitate the testimony of adult prostitutes where they may be intimidated when testifying against persons accused of prostitution-related offences.*

c) Interception of Private Communications for Prostitution-Related Offences

The circumstances under which invasion of privacy is authorized are defined in Part VI of the *Criminal Code*. S. 183 defines the offences for which an authorization to intercept a private communication can be granted. Some of the offences are serious (e.g., murder, uttering threats, assault with a weapon, sexual assault causing bodily harm, sexual assault, kidnapping, hostage taking) and others are primarily property offences (e.g., fraud, extortion, laundering proceeds of crime, possession of counterfeit money, smuggling). With respect to prostitution-related offences, only ss. 212(1) is currently listed in s. 183. In addition, in May 1997, new anti-gang legislation was passed by the federal government and includes provisions to intercept private communications involving members of criminal organizations.

Given the difficulty in obtaining evidence in prostitution-related offences, some law enforcement personnel suggested that if the police could obtain an authorization to intercept private communications between prostitutes and customers or pimps, they could more effectively enforce prostitution-related offences. This option was clearly supported by service providers in British Columbia who felt it would be a useful strategy for obtaining evidence and decreasing reliance on youth testimony. However, most respondents, including many police, indicated that it would not contribute significantly to a better enforcement of the legislation and it could be very costly. The invasiveness of the procedure for a summary conviction offence (s. 213) was also mentioned. The opinions of Crown Prosecutors in Quebec reflect this dichotomy: some perceive this strategy as being useful, particularly to investigate prostitution rings, others consider it too demanding in terms of costs and human resources to be effective for prostitution-related investigations.

The Working Group noted the lack of interest, and in some cases the lack of support for adding other subsections under s. 212 and, even more, s. 213, offences to the list of offences whereby a judicial order could be obtained to intercept communications. It is conceded that judicially-ordered interceptions ought to be reserved for more serious categories of crime.

The feeling of the Working Group, however, was that offences contained in s. 212 differ considerably from those referred to in s. 213 in view of their classification, their character and their sentence. The first indication of the serious character of s. 212 offences is the maximum penalty provided for them in the *Criminal Code*. Presently, ss. 212(1), listed in s. 183, has a 10-year maximum penalty; ss. 212(2) carries a 14-year maximum; and ss. 212(4), a five-year maximum. Bill C-27 added a five-year mandatory minimum penalty for a new aggravated procuring offence under ss. 212(2.1).

Furthermore, the activity of individuals who either prey on prostitutes or who obtain the sexual services of those under 18 is sufficiently repugnant to Canadian values to warrant the intrusiveness of a wiretap order. Procuring, prohibited by ss. 212(1) and 212(2), is often accompanied by violent and controlling behaviour. Certainly, aggravated procuring, as defined in ss. 212(2.1), is as serious an offence. Although ss. 212(4) does not normally involve the same level of violence, its purpose in protecting children from exploitation justifies inclusion among offences for which a wiretap can be obtained.

The use of wiretap would tend to decrease the reliance on the testimony of youth by either corroborating such testimony or dispensing with the need altogether. Finally, relying on the use of wiretap in the case of some offences under s. 212 would not represent the huge cost that might arise if it were used for s. 213 offences, as the former offences occur less frequently. In any event, the police would be expected to use their discretion in requesting authorization for wiretaps only in the most serious cases so that costs could be kept under control.

Recommendation:

> *That s. 183 of the* Criminal Code *be amended to include ss. 212(2), ss. 212(2.1) and ss. 212(4) of the* Criminal Code *to allow for judicially authorized interceptions of private communications in respect of these offences.*

(ii) Police Strategies

a) High Risk Homicide Registry (HRHREG)

In Alberta, the RCMP have developed a registry for persons believed to be at risk of becoming victims of homicide. The registry expedites the process of body identification. The registry was considered by police to be warranted by the large numbers of unidentifiable bodies of prostitutes disposed of in remote rural areas in Alberta. Investigators were finding that identification of these bodies was taking up to seven days, significantly interfering with effective detection and apprehension of homicide suspects. Prostitutes now comprise an overwhelming majority of the individuals registered to date.

The HRHREG is voluntary and collects information such as height, weight, identifiable marks, scars, broken bones, tattoos, birthmarks, and so forth. Information about the individual's lifestyle is also collected: sexual activity including the activities that are "not allowed;" types of drugs used; clothing preferences; and jewellery. Registrants are asked to provide the names of associates so that victim background and potential suspects or motives can be established. The registrants also disclose their next of kin as well as any medical or dental practitioners they have consulted and locations that they frequent.

Crossroads, an outreach program in Edmonton, working in unison with the RCMP, collects the information from the registrants. It collects this information on the street and informs the prostitutes about why the information is being gathered, who will have access to it, and that the information will only be used to identify their bodies in cases of homicide. Due to the confidential nature of the information, only one RCMP officer creates and has access to the data base. In the case of homicide, that officer searches the data base and can generate a list of potential victims.

The registry has assisted some prostitutes, especially youth, to re-examine their involvement in the sex trade. Registering and volunteering particular kinds of information forces some of the individuals involved in the sex trade to come to terms with the risks involved with prostitution.

The program was well received in Alberta where people volunteered to register, and it has recently moved into Saskatchewan. At the present time, there is no indication of differential impact on those using the registry who are members of identifiable groups (e.g., aboriginal, ethno-cultural minorities, or other groups). However, there is very little information available on who has actually signed up for the registries or the impacts of the program.

Recommendation:

> *That provinces, territories and the Canadian Association of Chiefs of Police consider the advantages of creating High Risk Homicide Registries in their respective jurisdictions, and of encouraging registration by members of all groups identified as being at high risk of homicide, in particular female and male street prostitutes.*

(iii) Penalties

a) Penalties for Customers and Prostitutes Convicted Under s. 213

S. 213 of the *Criminal Code* attempts to control the public harm aspects of the prostitution trade by making it an offence to do certain activities in a public place in order to obtain a customer for prostitution or the sexual services of a prostitute. In the consultation, people were asked whether they supported the idea of higher sentences for this offence. Increasing penalties could be achieved either through establishing a minimum sentence and/or increasing the maximum penalty under the *Criminal Code* for this offence. Harsher penalties for prostitutes themselves were not supported given their possible further victimization. Some respondents even proposed the creation of separate offences for those who sell sexual services and those who purchase them. Such an approach would respond to concerns that prostitutes tend to be punished more

severely than customers for reasons referred to in the section on fingerprinting and photographing those charged under s. 213 (even though, according to the Canadian Centre for Justice Statistics, prostitutes and customers have been at equal risk of prosecution under s. 213 since 1986).

There appears to be a very wide variation in the treatment given to prostitutes by police. While there is some evidence that prostitutes do turn to certain police for help and protection, many prostitutes report having been abused and exploited by police as well. Differential treatment of customers and prostitutes in court is also a concern that has been raised in a number of studies over the years. In 1994, the Federal-Provincial-Territorial Report on Gender Equality and Justice urged that courts treat prostitutes and customers equally under s. 213 of the *Criminal Code*.

The lack of awareness of criminal justice personnel (police, Crown counsel and judges) was cited as a major reason why offences involving both pimps and customers were not treated seriously. Since then, some police agencies have gone further: arresting customers but not prostitutes under s. 213. Most Crown Prosecutors in Quebec, for example, feel that increasing the penalties is not the right answer and that the courts need to be made aware of the role of clients so that they will impose more appropriate penalties within the currently available range of penalties. Many respondents across Canada stated that judges should be educated regarding the victimization of prostitutes in order to reduce the differential in sentences between prostitutes (days in jail) and customers (discharges or negligible fines).

As mentioned earlier, current recidivism rates for customers are low, which may mean that harsher penalties may be academic. For example, from 1986 to 1992 in Vancouver, 2045 men were charged under s. 213 for communicating. Only 44 of these 2045 men, or a rate of 2%, were repeat offenders (Lowman, 1996). Critics feel that the experience of being arrested is enough to deter most customers from re-offending and explains the low recidivism rate. Others suggest that the reliability of these rates could be questioned, as noted in the section dealing with fingerprinting and photographing of those charged under s. 213.

In general, participants responded to the option of increased penalties by stating that since s. 213 is a nuisance offence, mandatory jail time and/or increased sentences would be extreme and difficult to justify. Consultation participants preferred other options such as social supports to assist people in leaving the sex trade.

There has been some debate over whether s. 213 is even effective in dealing with the nuisance related to prostitution. Researchers evaluating the efficacy of s. 213 noted that there may have been a reduction in street level prostitution in Montreal, Quebec City, Niagara Falls, Ottawa and Halifax, but the length of time for which the reduction occurred could not be ascertained. This made it difficult to conclude whether the communicating law was effective. The Fraser Committee was concerned that "...the incidence of street prostitution in Vancouver and Toronto was not reduced" and that, likewise, no decrease had occurred in Winnipeg, Calgary or Regina (Lowman, 1997: 3-4).

Accordingly, in view of the nature of s. 213 as a nuisance offence for which the reported recidivism rate is low, and the questionable efficacy of s. 213 in addressing the nuisance of street

prostitution, legislation to bring in a higher maximum penalty or mandatory jail sentence for the offence under s. 213 would not be appropriate at this time.

Recommendation:

> *That there be no amendment to the* Criminal Code *to establish a minimum sentence or increase the maximum sentence for persons convicted under s. 213 of the* Criminal Code.

b) Penalties for Those Convicted Under ss. 212(1)

In Canada, investigations of offences under ss. 212(1) and (2) are often arduous and require a high level of police resources. Thus, there is a great deal of support for laws which assist in enforcement efforts and allow harsh sentences for pimping.

There was general agreement in the consultation that efforts should go into harsher treatment of pimps, who are seen as the "evil" element in prostitution, rather than being harder on prostitutes and customers. However, according to official crime statistics, serious violent assaults and homicides against prostitutes are more frequently perpetrated by customers than pimps. Certain prostitutes, particularly in British Columbia, endorsed the view of customers as the major source of danger, and noted that pimps often serve as protectors.

The Working Group believes that the current penalty of 10 years for adult-related procuring offences appropriately reflects the seriousness of these crimes. Problems associated with these offences result primarily from lack of police resources to fully pursue investigations of pimps, failure to detain accused pimps in custody pending trial, or the imposition of lenient sentences on account of judicial unawareness of the dynamics of control and manipulation in the sex trade. Efforts to address these factors are likely to have greater effect than simply increasing the maximum penalty in the *Criminal Code* for these offences.

Recommendation:

> *That there be no amendment of the* Criminal Code *to increase the maximum sentence for persons convicted under ss. 212(1).*

B. COMMUNITY APPROACHES

People involved in prostitution require day-to-day help in order to reduce the damage done to themselves and others. Such help can take the form of free condoms, needle exchanges, food and shelter. Others, especially those on the street, may experience a crisis (e.g., an assault, a drug overdose) that requires immediate support and intervention to alleviate any immediate danger such as medical attention, food and shelter. These crises can be followed by a desire on the part of prostitutes to get out of the "life" and to start again. However, such a decision is unlikely unless the person can imagine a better lifestyle, in which not only immediate needs are met but lifestyle improvements are possible.

(i) Social Intervention for Prostitutes

Social intervention can range from harm reduction measures to measures that actually offer new opportunities such as an alternative career. In discussing these strategies, it should be kept in mind that many of the needs identified for youth in the previous section are relevant to adults involved in street prostitution, as many of these adults entered the sex trade as youth.

Some Canadian communities have identified the types of social services and resources that are needed to reduce the deleterious impacts of prostitution on individuals and communities. Priorities include the need for detoxification services and substance abuse programs, since alcohol and drug addictions are often part of the prostitution lifestyle.[46] Certain initiatives, such as distribution of free condoms, are widely recognized as valuable.[47] Communities also stress the need for safe accommodation, both for youth and adults involved in prostitution, and for secondary stage housing to allow prostitutes to make the transition out of the prostitution lifestyle. This is particularly important given the dangers that people involved in street prostitution face; dangers include assaults sexual assaults and physical assaults carried out by customers and pimps. Some of these assaults are serious enough to cause death.[48] Both require programming to address immediate physical and emotional needs, and education and training to help the person build alternatives.

Some social services, including medical, educational, and other forms of support, are available in major urban centres across Canada. However, it has been recognized for some time that people involved in prostitution may not use the "mainstream" services, either out of lack of awareness that they exist or because of perceived problems with the services (e.g., hours in which the services operate). Some prostitutes have also complained about being treated in a judgmental fashion by medical personnel or police. One way of addressing concerns about professionals who deal with prostitutes is to ensure that there is appropriate training available.

Specialized outreach programs, which employ workers knowledgeable of the sex trade and meet prostitutes on their "turf," have been used in some areas to address the social, economic and health needs of street prostitutes and help them make a transition from the street to a healthier lifestyle. These outreach workers, who are most often the links between those involved in prostitution and the mainstream society and services, relate especially well to prostitutes as they may share common characteristics with their clients (e.g., aboriginal workers for aboriginal clients) or are ex-prostitutes or simply knowledgeable about prostitution.

In smaller centres, where prostitution is known to be a serious problem, appropriate services may be completely lacking. For example, communities in British Columbia have indicated that it is not sufficient to have services available hundreds of miles away (e.g., people in Prince Rupert who need substance abuse support may have to go to Prince George to receive it). When

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[46] From the Victoria survey of sexually exploited youth, the Ottawa study of street prostitutes, and consultation reports.

[47] In 1987, only 12 of 25 prostitutes interviewed in Halifax regularly used condoms with customers. Of these 12, five said that they do not use condoms if offered a higher fee by customers.

[48] E. Duchesne. *Street Prostitution in Canada*. Statistics Canada (Juristat), 1997.

fundamental services are not available locally, the potential for people getting needed help is drastically reduced.

It must also be recognized that some street prostitutes experience difficulty in obtaining social support because of their personal circumstances. This can be due to cultural, medical or social reasons. They may suffer from conditions such as foetal alcohol effect or foetal alcohol syndrome (FAE/FAS). Others may come from an immigrant or aboriginal community and face linguistic and cultural challenges. Here, outreach workers knowledgeable about the realities of street life can be particularly useful.

A survey of jurisdictions indicated that some specialized programs currently operate in cities such as Halifax, Ottawa, Montreal, Toronto, Winnipeg, Calgary, Edmonton, and Vancouver. These programs range in cost from $127,000 for three outreach workers in Vancouver, to $900,000 for larger and more comprehensive programs elsewhere. Harm reduction programs such as distribution of free condoms are relatively common across Canada. Some of these specialized services are available from prostitution advocacy groups (e.g., PACE in Vancouver and Streetlight in Toronto). Other programs that are available for a broader group of clients are sometimes used by people involved in street prostitution: needle exchanges and safe houses are examples.

Responsibility for development and funding of these programs is shared by different levels of government. The constitutional distribution of powers in Canada gives the provinces the major share of responsibility in the fields of health, social services, justice and education. However, the federal government plays a large financial role in supporting these provincial mandates through a range of equalization payments, block funding and cost-sharing agreements. There are also a number of federal programs which, though not specifically aimed at prostitutes, provide project funding that can be used by communities, non-governmental organizations and other interested parties. Some provinces already have programs in this area as well. Unfortunately, many innovative programs are threatened and, in some areas, have been cut due to budgetary constraints.

An example of a creative program to help street prostitutes survive on the street as well as to get out of "the life" was cost-shared by the Federal Department of Justice and a province: the Option Youth Society, in Vancouver, in 1989. The Society established a restaurant as a training facility for prostitutes who were motivated to seek employment in the hospitality industry. Young people were trained as cooks, waiters and waitresses. They were given on-the-job training, social support and job placement. The end product was the Picasso Cafe, a full service restaurant in Vancouver's West end that was able to accommodate up to 100 customers.

While there are a range of programs available, including prevention (primarily for youth), harm reduction and crisis intervention programs, there are very few programs to support those who wish to exit prostitution. An exception is the Streetlight program in Toronto, which is specifically designed for those who wish to exit the sex trade. Exiting is an area that deserves more attention. Consultations with people involved in prostitution indicate that many of them hope to leave this lifestyle, but feel that there are no realistic options for doing so. There are also

a number of people in the sex trade who feel that it is a viable career choice and state that they do not wish to exit.

In looking at the exit process, it is clear that barriers do exist. First, many people have no place to live or no way to support themselves without relying on prostitution, particularly, in some cases, a pimp. Second, if they wish to exit, they may not feel safe in doing so. And third, they may not have the skills to enter a new phase of life, either by entering training and educational programs or by applying for "mainstream" jobs. The Ottawa study of street prostitutes concluded that people involved in prostitution in that city were either not applying for "straight" jobs or were doing so ineffectively. They concluded that this was due to barriers to employment, primarily educational barriers.

As noted previously in the section on youth, it is important that social supports be coordinated with enforcement efforts. People who are involved as witnesses in cases of pimping, for example, may be intimidated. For a person who has been repeatedly victimized, an offer of social services in the course of a case going to trial could help the person to consider leaving the sex trade.

Recommendation:

> *That the provinces and territories, with the assistance of the federal government, review their support for social interventions with a view to ensuring that there are appropriate, accessible services for adults involved in prostitution. These services should include safe accommodation, crisis intervention and counselling for those who desire assistance in leaving the sex trade. Services provided should be "user-friendly" to assist adults engaged in prostitution to obtain treatment and counselling particularly with respect to sexually-transmitted diseases and alcohol and drug abuse.*

(ii) Alternatives to Address the Involvement of Customers in s. 213 Offences

a) Strategies to Deal with Motor Vehicles of Customers

Strategies directed toward license suspension or driving prohibition of the customers of prostitutes and seizure or forfeiture of customers' vehicles proved to be extremely controversial and elicited strong positive and negative reactions during the consultations. There was also a divergence of opinion among the members of the Working Group about their effectiveness and suitability. That divergence will be outlined below.

Effectiveness of Strategies Targeting the Use of Motor Vehicles by Customers

In most of Canada, cruising in a motor vehicle is the customer's preferred method of communicating with a prostitute for the purposes of prostitution. Indeed, in the 1996 study by John Lowman, *Men Who Buy Sex*, funded by the Attorney General of British Columbia, 91% of 440 cases of men charged with prostitution under s. 213 involved the use of a motor vehicle. The importance of the motor vehicle in prostitution has been likewise recognized by the Supreme

Court in *Reference re ss. 193 and 195. 1(1)(c) of the* Criminal Code *(1990),* 56 (3d) C.C.C. (30) 65.

Traffic congestion created by pimps and customers cruising in motor vehicles is one of the most visible signs of the harm caused by street prostitution. Vehicles allow the customer to have control. They provide anonymity for the customer while searching for a prostitute, a method of transportation, and a place for the eventual transaction.

However, cars are dangerous places for prostitutes. In the same study referred to above, Lowman found that six of 12 murders of prostitutes took place in vehicles or other outdoor locations. He also found that 19 out of 39 sexual assaults of prostitutes took place in vehicles. In Alberta, the alarming numbers of unidentified bodies of prostitutes in the province found in locations that required transportation of the victims by motor vehicles lead to the creation of the voluntary High Risk Homicide Registry referred to earlier and suggests that motor vehicles are used for this purpose.

The proponents of strategies that target motor vehicles used by the customers of prostitutes argue that such strategies will deter customers while protecting prostitutes from danger. They argue that, because the motor vehicle is an integral part of most street prostitution offences, a disincentive to use motor vehicles could substantially reduce the frequency of prostitution offences. The customer would enjoy neither the anonymity nor comfort that motor vehicles provide for engaging in prostitution offences. License suspensions and driving prohibitions have proven an effective tool in combating driving offences and they could have a similar effect here. In an October 1997, study entitled *Evaluation of Administrative Licence Suspension and Vehicle Impoundment Programs in Manitoba*, the Traffic Injury Research Foundation found administrative license suspensions and impoundment of vehicles have extensive specific deterrent effects on impaired drivers.

Those who question the effectiveness of these strategies counter that undoubtedly some customers will avoid cruising prostitution areas in motor vehicles due to fear of losing their drivers' licences or motor vehicles. However, that initial fear may be dissipated unless the level of enforcement by police is increased so as to give some reality to that fear. An increase in enforcement on a consistent basis is unlikely in these times of restraint. Some of those whose driving privileges are suspended would still drive despite the loss of privileges, as they do in other cases. Even if all vehicular traffic were eliminated by the proposed measures, prostitution activities would continue. Some of the other unattractive by-products of street prostitution, such as the litter created by used condoms and syringes, might still occur. If cars were unavailable then customers and prostitutes would use street locations to complete their transactions. This might be more distressing for passers-by than having these transactions take place more out of public view in motor vehicles. There would also be an increase in the litigation of criminal charges because of the potential loss of driving privileges or motor vehicle use upon conviction.

Suitability of Strategies Targeting the Use of Motor Vehicles by Customers

Both the federal and provincial levels of government have jurisdiction to legislate in relation to motor vehicle traffic, including traffic in relation to prostitution offences. The federal power is

based upon the jurisdiction to enact criminal law and procedure under s. 91 (27) of the *Constitution Act, 1867,* as exemplified by the criminal offences of impaired driving and dangerous driving. The provincial power is derived from jurisdiction under s. 92(13) in relation to property and civil rights in the provinces, including the regulation and control of motor vehicles operating in the province. However, a province cannot attempt to control prostitution in the guise of attempting to control street traffic. *(R. v. Westendorp, (1983)* 1 S. C. R. 43). If the only reason for the law is to control prostitution, then the power is federal.

A range of legislative intervention is available to sanction the use of motor vehicles in the commission of prostitution offences contrary to the *Criminal Code*. Offences which might properly attract such a sanction include:

s. 173(1) (indecent act);
s. 211 (transport to bawdy house);
s. 212(1)(a)(b)(d)(e)(f)(g)(h) (procuring);
s. 212(4) (attempt to obtain sexual services of person under 18 for consideration);
s. 213 (communicate for the purpose of prostitution).

The Working Group considered a number of alternative initiatives; some of those that seemed most promising are set out under the following two headings.

A. Possible federal initiatives:

1. Amend the *Criminal Code* to include a section that allows for a mandatory or discretionary order to be made by a trial judge prohibiting an offender from operating a motor vehicle upon conviction (or discharge under s. 730) of an offence under the above-listed sections committed by means of a motor vehicle. Such a provision would resemble current ss. 259(1) or (2) of the *Criminal Code*. Alternatively, an amendment could be made to one of ss. 259(1) or (2) to incorporate the above-listed offences.

   Some argue, however, that the courts may already have the power to prohibit customers from driving a motor vehicle in these circumstances pursuant to s. 732.1(h) of the *Criminal Code*, which permits a sentencing judge to require that an offender, as a term of probation, "comply with such other reasonable conditions as the court considers desirable... for protecting society."

B. Possible provincial initiatives:

1. Amend provincial *Highway Traffic Acts* to include the following when the offender is *arrested* for prostitution-related offences committed with the use of a motor vehicle:

   i) Immediate impoundment of the motor vehicle driven by that offender;

   ii) Retention, after impoundment referred to in (i), for a prescribed statutory period of time of the motor vehicle owned and driven by that offender;

iii) Administrative licence suspension, upon arrest, of the driver's licence of that offender.

2. Amend provincial *Highway Traffic Acts* to include the following when the offender is *convicted* (or discharged under s. 730) of prostitution-related offences committed with the use of a motor vehicle:

i) Seizure and retention for a prescribed statutory period of the motor vehicle owned by that offender;

ii) Forfeiture and sale of the motor vehicle owned and driven by that offender;

iii) Suspension of driver's licence;

iv) Seizure and retention for a prescribed statutory period of a motor vehicle driven by the offender found driving a motor vehicle while his driver's licence is under suspension following conviction (or discharge under s. 730) of any of the above-listed offences committed with the use of a motor vehicle;

v) Forfeiture and sale of the motor vehicle owned and driven by the offender found driving while his driver's licence is under suspension following conviction (or discharge under s. 730) of any of the above-listed offences committed with the use of a motor vehicle.

One or more of the above provincial initiatives might be selected by provinces and territories depending upon the provincial experience with street prostitution and its impact upon communities. If the provinces have the right to enact legislation under the heading of property and civil rights, the fact that different provinces have a different regime would not, as such, appear to be unconstitutional. As long as the differentiation in programs between provinces is not dependent upon the personal characteristics of the individual then such differences would not constitute an infringement of the *Charter* (*R v S.(S)*, (1990) 57 C.C.C. (3d) 115 (S.C.C)).

Opponents of these measures were concerned about whether they were disproportionate. In their view, these measures should be referable to offences where driving is an element of the offence, or the serious nature of the offence being committed with a motor vehicle warrants the measure. Dangerous driving is an example of the former; criminal negligence causing death an example of the latter. In any event, these measures should be reserved, in their view, for more serious offences where danger to the public is clearly involved and not for nuisance offences such as s. 213. While, as mentioned earlier, there are some concerns about statistics in this area, recidivism by customers has not been a documented problem and, in the absence of such documentation, there is no clear need for such measures. In addition, from an administrative standpoint they argue it may be difficult for motor vehicle administrators to determine without a hearing whether a vehicle was used in the commission of these offences so that a license suspension or seizure or sale would follow.

These persons also believe that the suspension of licenses or prohibition from driving is usually reserved for offences that evidence a clear lack of fitness to drive, such as impaired driving or dangerous driving. As mentioned earlier, it can be argued that individuals can presently be prohibited from driving under s. 732.1(h) of the *Criminal Code* as an "other reasonable condition" of probation which a sentencing court "considers desirable... for protecting society." Thus, there would be no clear need demonstrated for a specific right of the court to prohibit driving upon conviction for prostitution-related offences.

They also point out that cars are not forfeited or impounded pursuant to the *Criminal Code* offences where drunk drivers kill or injure people.[49] If that is not warranted then why should the *Criminal Code*, or even provincial acts, be allowed to have such consequences? Forfeiture of the car might deprive the owner or driver thereof of his livelihood and might contradict the fundamental principle that sentencing must be proportional (s. 718.1 of the *Criminal Code*).

Those who favoured the use of these strategies felt that the concerns were overblown. Sanctions that are excessive so as to outrage standards of decency, or are grossly disproportionate to the offence, or are arbitrarily imposed, are invalid (*Smith v R*, (1987) 58 C.R. (3d) 193 (S.C.C). None of the recommended measures approach that level. The most frequent manner of committing the offence involves the use of a motor vehicle which is, in turn, an integral part of the nuisance created by street prostitution; therefore, there is a rational connection between the driving and the offence. The fact that only serious offences or driving offences have been the basis of these measures in the past does not preclude them for other offences such as street prostitution. Although it is true that recidivism has not been a documented problem with customers, this may be due to improper measurement. In any event, there is no need for proven recidivism to support these measures. The police could provide sufficient details of the commission of the offence to identify it as one involving a motor vehicle so as to overcome any administrative problems.

It is difficult to clearly predict the potential impact of these measures from a diversity and equality point of view. Certainly, seizure or forfeiture of a motor vehicle may be very serious for a person who is dependent upon a car for employment or other reasons, and those who are poor may be particularly affected. Wealthy individuals could be expected to make alternative arrangements, such as renting or buying another vehicle. However, they would also be penalized if their vehicle is forfeited.

While proposals to seize and forfeit vehicles for prostitution offences would be designed to penalize the offender, some participants expressed concern that others, such as family members who may be dependent on the vehicle, may be inadvertently penalized by the confiscation of the automobile. While not excusing the conduct of the offender, they argued that such proposals must be sensitive to the serious potential negative impacts on innocent parties from any scheme aimed at the seizure of vehicles.

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[49] Although such measures are planned for implementation in Ontario by the Fall of 1998.

Even if there is provincial jurisdiction to allow for sanctions such as license suspension, driving prohibition, vehicle seizure or vehicle forfeiture, some members of the Working Group were uncomfortable with some or all proposed initiatives, including the federal initiatives. The views of the Working Group were strongly held and after considerable discussion, no consensus could be reached.

Recommendation:

> *That, in view of the lack of consensus on motor vehicle strategies such as license suspension, driving prohibition, the impounding of motor vehicles, their seizure or forfeiture, the Working Group makes no recommendation.*

b) Role of Municipalities in Controlling Motor Vehicle Traffic

There was support from some respondents for efforts by municipalities to address street prostitution by controlling motor vehicle traffic in specified areas, such as residential areas or schools. It was acknowledged that such efforts have, in some cases, been successful in addressing the nuisance in these areas, although admittedly only serving to displace the problem to another, sometimes more dangerous, location.

There may be other options that the municipalities can utilize to empower the members of those communities who are frustrated with traffic congestion. For example, in Ottawa, the police and the community work in unison to identify and target those cars that are causing the most congestion by circling the neighbourhood several times over the course of the day. The police hand out cards to the members of the community. The community uses the cards to record information such as the licence plate numbers and the makes and models of cars considered to be a nuisance. The police (beat officers) collect these cards and then actively target (via "sting" operations) those drivers who have been most frequently sighted in the neighbourhood.

Recommendation:

> *That municipalities consider the use of their present powers to address street prostitution by controlling motor vehicle traffic in specified areas, bearing in mind that this may lead to problems associated with displacement of "strolls".*

c) Alternatives for Targeting Customers

Since the early 1980s in Canada, there have been attempts by local citizens' groups, police forces and newspapers to rid communities of street prostitution by targeting customers or interfering with their activities. These initiatives have been undertaken because it was felt that law enforcement was not deterring the trade. One objective of these initiatives has been to expose customers by removing their anonymity.

In Vancouver in 1986, police officers belonging to a Task Force were known to hide and jump out from behind bushes with flashlights to interrogate prostitutes and their customers. Similarly, in Toronto in the summer of 1987 residents in the downtown core organized "hooker patrols."

They patrolled stroll areas in groups of two and four, photographing customers, shining flash lights in their cars and recording their license numbers. Local newspapers in many Canada cities have, for periods of time, published the names of customers charged with street prostitution offences. In the United States, "john shaming" has been taken a step further as some communities have broadcast the names of patrons on local radio and cable television channels. Following the United States, Calgary is looking into "john TV" where the identities of those convicted of prostitution offences would be aired on cable television.

Despite these efforts, there is little evidence that john – shaming measures have resulted in the diminution of street prostitution. A 1982 survey of 13 cities in the United States that had been systematically giving out the names of prostitutes' customers showed no discernible decline in prostitution arrests. In some Canadian cities, these strategies are believed to have only displaced street prostitutes from one area to another. Many respondents agreed that campaigns to harass customers simply move the problem from one area to another. In other jurisdictions, these initiatives have been stopped after accusations that they resulted in family break-ups and divorces.

Some participants who had experience with these campaigns agreed that they did not work and that, in most cases, the media are not willing to participate in these campaigns by publishing names of customers. However, in areas such as Vancouver, where police have sent letters to the homes of motorists found in known strolls, the perception was that these initiatives had been successful. In particular, there was significant support among representatives of residential groups although participants mentioned that police did not have the time nor the resources to send letters to motorists who frequent prostitution strolls. In addition, there is potential for violent confrontations in shaming johns.

Recommendation:

> *That strategies such as "shame the johns campaigns" be kept under review in light of the mixed comments received on the effectiveness of these approaches.*

d) Prostitution Diversion Programs ("John Schools")

A "john school" is a specialized diversion program that exists in some cities for men arrested under s. 213 (communicating for the purposes of prostitution). The program offers them an alternative to entering the criminal justice system. Attendance at the one-day program generally constitutes the diversion requirements and charges are not pursued or they are dropped.

Specialized diversion programs for customers of prostitutes have been, and are being, developed in several areas of North America. In the United States, San Francisco's "First Offender Prostitution Program," initiated in March of 1995, has received extensive recognition for its innovative approach to the problem of prostitution-related nuisance. San Francisco claims that a very low number of male customers have re-offended since the program's inception.

Toronto was the first Canadian city to launch a diversion program (modeled after San Francisco's) in March 1996. Other Canadian cities have used Toronto's Prostitution Diversion

Program as a model: Edmonton (May 1996); Ottawa (May 1997); Hamilton (June 1997); Winnipeg (September 1997); and Calgary (May 1998).

Programs differ in terms of the stage at which diversion occurs (pre-charge or post-charge) as well as the amount of involvement the offender has with the courts. In most programs (with the exception of Edmonton), only those individuals with no criminal record or previous offences qualify for the program. In most situations (with the exception of Toronto), the offender is arrested under s. 213 and then given the option (if they qualify) of attending the program or going through the court process. In Toronto, however, the offender is charged, goes to court, and is then given the option of diversion.

Programs are similar in content as all include an educational element that covers a number of health, community, social and gender issues related to prostitution. Typically, a "john school" involves the community in both the planning and implementation of the educational modules. For example, community members may address the students regarding the damage associated with street prostitution to neighbourhoods (noise and litter) as a result of the sex and associated drug trade. Ex-prostitutes address issues such as the impact of prostitution on women and how they view men who buy sex. In addition, there are sessions on health issues such as STDs and some programs may include a psychiatrist speaking about sex addiction.

The amount as well as the administrative details of charging a fee for the programs vary. For example, in Toronto, the Salvation Army asks for donations of $250 while a similar process is used in Ottawa to request $200. In Winnipeg, offenders are asked to give between $200 and $400, depending on the offender's ability to pay. In Edmonton, a $400 fee (paid by certified cheque, money order or cash only) is charged for the program. Here, the fees will be reduced (not waived) if someone cannot afford that amount. In Hamilton, a $250 mandatory fee is collected by the Elizabeth Fry Society. Hamilton is the only program that enforces a mandatory fee.

Most jurisdictions have chosen not to implement a mandatory fee to avoid a *Charter* challenge. It is argued that a mandatory fee could be considered as being discriminatory because some offenders will be able to buy their way out of the court system, while others will be excluded from the diversion option because they cannot afford to pay. Thus, those who cannot pay will be put through the criminal justice system. What amount should be charged seems to differ across programs and over time. For example, in Toronto, the Salvation Army originally asked for $250, but Metro Toronto has recently approached the Ministry of Attorney General in Ontario requesting that this amount be increased to $500 and be mandatory.

Without a mandatory fee, programs can, over time, risk closure due to a poor operating budgets and the reality that many offenders will donate nothing, or less than the full solicited amount. In Toronto, the accumulated fees are put into an account to fund a "Streetlight" program for prostitutes. This program is designed to help prostitutes exit the sex trade and can only run if the john school generates enough funds. Streetlight consists of an eight-hour class called "Choices" and an eight week life skills program. In Ottawa and Edmonton, the money is put back into the community to help fund outreach or exit programs for prostitutes.

In general, proponents of prostitution diversion assert that the programs are effective and have been successful since they have experienced low recidivism. They note several key benefits of diversion. First, they argue that john schools are effective because the general feeling is that the penalties imposed for a conviction under s. 213 are inadequate, and john schools force these men to experience some consequence for their actions. Second, some program organizers believe that education is an effective tool in the reduction of any problem and so the school can assist by educating. Most proponents also feel that the program empowers the community and allows the community members to take ownership of the problem and directly express their frustration. In a similar vein, some argue that john schools help the ex-prostitutes "heal" as they are given the opportunity to discuss their feelings with the students. Program promoters note that offenders benefit by not having their names published or acquiring a criminal record. Finally, it is argued that the program saves taxpayers money as the courts experience a lower workload, while the program generates money which is put back into the community to assist those who wish to exit the sex trade.

In contrast, prostitution diversion programs have been criticized on many accounts. First, opponents reject recidivism as an accurate measure of john school efficacy as recidivism rates have always been low subject to what has been mentioned earlier in this respect. For example, from 1986 to 1992 in Vancouver (where there has never been a program), 2045 men were charged under s. 213 for communicating and only 44 of these 2045 men, a rate of 2%, were repeat offenders (Lowman, 1996). Critics feel that the act of arrest is enough to deter most from re-offending and that john school is merely gratuitous if its purpose is, in fact, to deter offenders from using the street as a venue for obtaining the services of a prostitute.

Critics also argue that s. 213 is a law that was implemented to reduce the nuisance associated with street prostitution. Thus, a prostitution diversion program should deal with issues related to this law. They argue that john school, in contrast, focuses on prostitution in general, not the nuisance it creates. Others opposed to the diversion program argue that, at a time when funds for addiction programs and so forth are shrinking, a school for individuals who have the money to cruise the street and buy sex is unconscionable. Some mention that the promotion of john schools may have the unintentional effect of giving men even lower penalties than they currently receive when arrested under s. 213.

One option that was discussed to utilizing the john school diversion program is to implement "educational programs for johns" to be used as a component of sentencing, that is, as a term of probation or conditional discharge. Thus, the offender would have the experience of going through the court system (a deterrent) and, if convicted, also attend john school as a means of education.

John schools are clearly targeted for men, and consideration must be given to whether a similar diversion program should be available for prostitutes. For example, "educational programs for prostitutes" could be implemented as a diversion program and as education for those who want to exit the sex trade. Currently, women arrested under s. 213 have very limited access to specialized diversion programs because of the lack of availability of the programs and also because they tend to have a criminal record.

Recommendation:

That communities determine the appropriateness of specialized diversion programs (e.g., "john schools") for their own communities, in light of local issues such as the level of street prostitution, support by the community for the program and funding options. Communities are ...ged to recognize the importance of specialized exit programs for female, male and transgender prostitutes who wish to leave the sex trade as an integral component of the community's attack on street prostitution.

That the federal and provincial governments support an independent evaluation of existing john schools in Canada to determine the efficacy of such programming in reducing street prostitution.

(iii) Neighbourhood Concerns

The consultation raised the question of whether there were effective alternatives to the use of the criminal justice system in addressing street prostitution. Specific options raised were the use of civil injunctions or community mediation. Since the consultation, other approaches have also emerged.

a) Civil Injunctions to Move Street Prostitution Away from Targeted Areas

In most jurisdictions, the Attorney General may apply for a civil injunction if prostitution is considered to be a public nuisance (that is, it affects more than one business or residence). The injunction would restrict prostitutes from being in a specified area.

Very few respondents were in favour of the use of civil injunctions which they viewed as ineffective and problematic to enforce. In British Columbia, where a civil injunction had been used in 1984 to remove street prostitution from the West End of Vancouver, respondents tended to note that this simply moves prostitutes to another, often more isolated and dangerous area. The Vancouver experience revealed that moving prostitutes out of a largely commercial area also resulted in increased street prostitution in residential areas and around schools. While this may be seen as a short term solution to a problem in a particular area, the experience in Vancouver tends to suggest that the long term implications are serious and problematic. In particular, the effects of displacement of prostitutes to unsafe areas may be associated with the high levels of homicides against women involved in prostitution. Any measures that result in simply displacing prostitution from one area of a city to another must be carefully considered in terms of these impacts.

To successfully apply for a civil injunction, the Attorney General would have to show that there are no other, less drastic, alternatives available to reduce the nuisance. Clearly, the use of enforcement techniques, ranging from by-law enforcement and traffic violations to arrests under the communicating provision is available to police. Furthermore, if there are insufficient police resources to address the problem under the *Criminal Code*, it is unlikely that the police would be able to enforce an injunction, as similar levels of resources would be required.

Recommendation:

> *That civil injunctions not be resorted to in order to reduce the nuisance associated with street prostitution. Such injunctions are likely to merely displace the targeted street prostitution to another location, which may prove equally problematic to residents or may increase the danger to prostitutes. Communities are reminded of the availability of s. 213 of the* Criminal Code *for the purpose of reducing the harms to neighbourhoods caused by street prostitution.*

b) Community Mediation

Overall, community mediation was viewed favourably in most areas. Participants felt that this option would only be viable when the problem of street prostitution is on-going and there exists an organized and energetic residents' group. The problem of street prostitution is often driven out of one community and into another. For this reason, participants support long-term solutions where the community takes ownership of the problem and views it as internal. This forces each community to develop a community-based and long-term solution that does not simply move street prostitution from one area to another. In this model, the prostitutes are viewed as residents of the community who can also take an active role in reducing the problems associated with street prostitution.

Through multi-party Alternative Dispute Resolution (ADR), the key people and groups involved would be brought together to reach agreement on prostitution-related issues. The approach is most likely to be effective in areas where the sex trade is a fairly new phenomenon, as the views of the parties are less likely to be deeply entrenched or politicized.

In British Columbia, a number of neighbourhood responses to prostitution-related problems have been employed. In Vancouver in particular, community mediation has been quite successful as Crime Prevention Offices (CPOs) and neighbourhood associations approach outreach agencies to mediate problems in the community. For example, the neighbourhood and the CPO work with an outreach organization such as P.A.C.E. (Prostitution Alternative Counselling and Education) and ask them to speak with the prostitutes in the community. The outreach workers ask the prostitutes to stay away from certain locales, ensure that their area is litter free, and that they respect certain rules of conduct. While this program has been fairly successful in places such as Mount Pleasant in Vancouver, some drawbacks to this approach have surfaced. For example, when new prostitutes move into an area they must be approached upon arrival. This is an ongoing process which means that all parties must work continuously and have the energy to do so.

Other examples of community conflict resolution have included representatives of neighbourhoods and prostitutes participating in a mediation process. In such cases, considerable negotiations were necessary to achieve tangible results. The frequent problem is that residents, prostitutes and the police come forward with irreconcilable differences and opposite points of view. In Vancouver, participants recalled attempts at conflict resolution that were not successful and were even considered abusive. Prostitutes noted the problems associated with mediation

when there is a power imbalance between them and neighbourhood associations, with the latter being more articulate, organized and intimidating.

c) Other Strategies

Other strategies include Citizens Patrol Teams made up of community volunteers and police have been implemented in parts of British Columbia and Nova Scotia. Citizens Patrol Teams discourage sex trade activity by occupying street corners and maintaining a presence to eventually force the prostitutes and customers out of the area. In addition, residents in various communities have organized Clean-up Teams to rid the neighbourhood of unwanted garbage. The clean-up crew may tidy an area in the early morning, for example, before rush hour traffic. Other such programs include Neighbourhood Enhancement where residents make neighbourhoods less attractive to prostitutes by ensuring that streets and parking lots are well lit and open to public view.

School Safety programs have been initiated in places like New Westminster, British Columbia, where CPOs work with residents to increase safety around schools by increasing police patrols around the school and grounds; carrying out morning patrols of school grounds to clean them up; enhancing the security of the school grounds; and utilizing environmental design techniques to limit the school's attraction to sex trade activity.

Recommendation:

> *That community conflict resolution be considered by municipalities to address specific problems posed to business or residential areas by street prostitution. Such a measure may be particularly effective where existing support services are staffed by outreach workers who have established credibility with local prostitutes and police and who are able to assist in developing joint solutions to the problems caused by street prostitution in neighbourhoods.*

(iv) Authority to Regulate Prostitution

This section of the report examines the prospect of establishing regimes to operate indoor prostitution or, to a lesser extent, to operate zones of tolerance for street prostitution. It should be noted at the outset that such schemes have only been discussed in relation to adults, as opposed to youth involved in prostitution-related activities.

As mentioned earlier, prostitution is mainly regulated by the *Criminal Code*, which deals with the associated problems created by prostitution. S. 210 and s. 211 make it an offence to keep or be found in a bawdy-house; s. 213 prohibits communicating in public for the purpose of prostitution; and s. 212 seeks to prevent individuals from manipulating or controlling prostitution.

Other *Criminal Code* provisions have been used to attempt to control related public nuisance aspects of street prostitution including performing indecent acts (s. 173); causing a disturbance

(s. 175), loitering and obstruction (s. 175), and trespass by night (s. 177). These provisions are of limited value in combating street prostitution because of the narrow interpretation given to such provisions by courts and the reluctance of the police to use these provisions in prostitution situations.

Municipal and provincial legislation has also been used to attempt to deal with prostitution. Provincial laws, such as those relating to landlord and tenants acts, the *Highway Traffic Act* and the public health acts have been of limited use. Municipal bylaws have also been resorted to. However, when Calgary, Montreal, Vancouver and Niagara Falls passed laws attempting to control street prostitution, the Supreme Court declared in *R. v Westendorp* ([1983] 1 S.C.R. 43) that such laws were unconstitutional because they encroached on the exclusive criminal law power of the federal government.

The Supreme Court decision has not prevented municipalities from exercising their power to regulate or license indoor activity. Many Canadian cities require that escort services and massage parlors secure business licenses like any other business establishment. Because business licenses are of more general application and not specifically directed to prevent prostitution activity, they are considered as being within the jurisdiction of the municipality. Before escort agencies can obtain business licenses they are required to comply with certain conditions. This would include location, hours of operation, and advertising. In many instances, police screen the escorts themselves as part of the approval system.

Many find this type of approval system hypocritical, and suggest that the municipalities are indeed well aware that some of these escort agencies and massage parlors might provide services that could make them prosecutable under the bawdy-house provisions of the *Criminal Code*. Others say that since many municipalities already regulate indirectly what could be considered to be bawdy-houses, it would be preferable to drop the fiction and simply allow bawdy-houses to carry on business exempt from prosecution under the *Criminal Code*, but subject to regulation by the municipality. The common bawdy-house provisions in s. 210 of the *Criminal Code* are rarely used to prosecute escort agencies or massage parlors. There are few complaints about indoor prostitution and where investigations have been mounted they have been labour-intensive, costly and have not necessarily resulted in significant penalties.

As mentioned earlier, to this point, legislation has not had a serious impact on controlling street prostitution. It continues to thrive. The police are only able to use s. 213 of the *Criminal Code* selectively because of the high resource implications of undercover operations, which police report is the only method of enforcing this section. As a result, informal zones of tolerance have come about.

Many feel that these non-enforcement practices ought to be formalized and that certain prostitution activities should be allowed by establishing zones of tolerance or limited legitimate bawdy-house operations.

a) Current Interest in Decriminalization and Regulation

During the consultations, there was a great deal of confusion about the current legal status of prostitution in Canada, as some people believed that prostitution *per se* was illegal.
In addition to confusion regarding the legal status of prostitution, the Working Group found that the terms "decriminalization" and "regulation" were often used interchangeably in the consultation. The Working Group uses the following terms in relation to adults involved in prostitution:

- "Decriminalization" refers to the complete removal of a prostitution-related offence, such as s. 210 or s. 213, from the *Criminal Code*;

- "Regulation" (also called by some people "legalization" or "partial decriminalization") refers to a framework in which some prostitution activity which is subject to criminal sanction under existing provisions of the *Criminal* Code would be rendered lawful, despite those provisions, where certain conditions specified in the *Criminal Code* were met; under those conditions, the prostitution activity would be exempt from criminal prosecution although the sections of the *Criminal Code* proscribing that activity would remain enforceable in other parts of the country where the exempting conditions were not met.

Advocates of *decriminalization*, including most women's advocacy groups, prostitutes' rights groups and youth involved in prostitution hold that prostitution offences should be completely removed from the *Criminal Code*. They argue that the harmful side-effects of prostitution, such as exploitation and violence by pimps, can be addressed through enforcement of other offences in the *Criminal Code* such as extortion and assault; that the noise and congestion, for example, associated with street prostitution can similarly be remedied by the creation and enforcement of provincial laws and municipal by-laws. These advocates maintain that it is not necessary to target prostitution itself in order to effectively combat its offensive by-products, which are properly the subject of other laws dealing more generally with violence, nuisance, panhandling, public sale of goods, etc.

Advocates of *regulation* generally attempt to restructure the practice of prostitution. The state would monitor the practice of prostitution through licencing and regulation in order to make prostitution safer and less visible. The Working Group prefers to use the term "regulation" rather than "legalization" to capture this view and to clarify that a regulatory framework is part of this approach. Use of the former term also tends to eliminate any misapprehension that the regulatory model would represent the legalization of all prostitution activities regardless of their nature, such as the pimping of youth.

In 1985, the Fraser Committee noted that "if prostitution is a reality with which we have to deal for the foreseeable future, then it is preferable that it take place, as far as possible in private, and without the opportunities for exploitation which have been traditionally associated with commercialized prostitution." To this end, the Committee recommended that the bawdy-house provisions of the *Criminal Code* be amended to allow one or two prostitutes to work out of private residences. The Government of the day did not act upon this recommendation.

With the current failure of s. 213 to effectively control street prostitution, municipal officials, social agencies and some police in cities such as Toronto and Vancouver have again initiated the discussion on decriminalizing and/or regulating prostitution. The advantages and disadvantages of such measures are discussed, as well as the situation in three countries that permit certain forms of prostitution.

b) Views Expressed During the Consultations on Decriminalization and Regulation

No consensus could be achieved in the consultations on the option of delegating to provinces, through interested municipalities, more regulatory authority to deal with prostitution. The response to the option posed in the consultation indicated serious differences in the views of people in terms of what the goals of law reform should be. Some respondents strongly supported the goal of eliminating prostitution entirely. Other respondents expressed what may be, at least in their view, a more realistic approach of reducing and containing the harm associated with the sex trade. This difference was complicated by the confusion evident around the current legal status of prostitution.

The discussion of decriminalization and regulation focused on two areas of concern: "red light zones" or areas of non-enforcement of s. 213 of the *Criminal Code,* and legally operating brothels.

Decriminalization of "red light zones" did not receive significant support in the consultations, although some participants felt that this approach, i.e., the creation well-lighted "safe strolls" that would be protected by police, would be beneficial both to prostitutes and neighbourhoods, in that such areas would not only be relatively safe but would remove the activity from residential areas. Decriminalization of bawdy-houses, however, was more of interest especially to those who believed that street prostitution is generally more dangerous than that which occurs indoors and that keeping brothels illegal promotes street prostitution.

The following are some of the arguments that were raised in the consultation.

Some respondents who favoured decriminalization of bawdy-houses felt that the morality underlying the prostitution legislation is outdated and that sexual relations taking place between adults in private should not be criminalized. The inconsistency, which was seen as hypocrisy, of the current prostitution legislation was also noted. Although prostitution in Canada is not illegal, most prostitution-related activities are. This creates confusion among the public and does not tell prostitutes or customers where and under what circumstances they can meet. There was also concern that the current configuration of the prostitution legislation penalizes those who are poor while favouring those with money. Currently almost all law enforcement in Canada has been directed at street prostitution. This has enabled a two tiered sex trade to emerge. More expensive licensed off-street prostitutes operate with virtual impunity while poorer customers and prostitutes, who are mainly on the streets, are routinely arrested.

There is ample evidence that, since 1985, large numbers of arrests of street prostitutes and customers have had little impact on levels of street prostitution. Rather, enforcement has simply

displaced street prostitutes from one area to another. In addition, the costs of enforcing the communicating provision have been onerous for municipalities strapped for money.

Some participants argued that decriminalizing or regulating prostitution would reduce violence towards prostitutes. In fact, as mentioned earlier, this view is supported by current research, which suggests that the illegal status of prostitution activities, especially those that occur in public or on the street, has contributed to a large amount of violence. The reasons for this were discussed previously and include the anonymity and isolation associated with street prostitution. Violent acts have increased since enforcement of the 1985 street prostitution law. Decriminalization could reduce reliance on pimps, enable prostitutes to work in less remote areas and possibly reduce the assaults and homicides against prostitutes. As with other legal businesses, standards regarding health and age of practitioners could be enforced.

Total decriminalization, without regulation, was supported by some participants, particularly, as mentioned earlier, by women's advocacy groups, who argued that the current illegal status of most prostitution activities stigmatizes and alienates women from social and other services. Decriminalization, they suggested, would allow prostitutes easier access to services, thus making them less vulnerable to victimization and violence. They also argued in favour of self-policing and self-regulation of prostitution and spoke about cost-effectiveness.

Those opposed to decriminalization or regulation argued that such strategies would not address the most serious problems of prostitution. They noted that damage to neighbourhoods would continue, as factors such as drug addiction among prostitutes could prevent many people from moving either to self-operated indoor businesses or to "safe strolls." Zoning problems could also occur since few neighbourhoods would welcome prostitution, business districts would object and industrial areas might not be safe.

Some participants felt that youth would still become involved in the trade in spite of not being allowed to work in legal businesses or on approved strolls, as the attraction of life on the street would continue. However, others argued that by reducing the number of people working on the street, youth would be more visible and measures to get them away from the sex trade would be more effective.

Finally, concern was raised regarding the effect of decriminalization or regulation on Canada itself. The government could be seen as profiting from the exploitation of women, and there could be an influx of prostitutes and customers into regions of Canada in which prostitution is allowed to operate legally.

c) Decriminalization and Regulation: the U.S.A., Netherlands and Australia

The Working Group reviewed a number of models of decriminalization and regulation throughout the world. The following three examples are perhaps the best known.

Nevada

The Nevada State legislature passed a local option law in 1971 giving counties with small populations the ability to approve or prohibit brothels. Prostitutes are licensed for 90 days at a time, to work in a specific county. The Board of Health requires that condoms be used at all licensed brothels and that prostitutes be tested weekly for gonorrhea and monthly for syphilis and HIV. If infected by gonorrhea or syphilis, the prostitute is denied work until the treatment is completed and a subsequent test shows a negative status. If she tests positive for HIV, a second test is administered. If that test is also positive, the woman is denied employment as a prostitute. She is then given an education program on "self-imposed restrictions" (presumably restricting sexual behavior).

Various security systems (including proximity to Sheriff's offices, security fences and guards) protect prostitutes from unwanted customers and the violence that may occur in other settings. However, this is at some cost to their own freedom. Prostitutes work full time for three weeks and have one week off. During their three weeks of working, they are not allowed to leave the brothel without a chaperone, and there are restrictions on where they can go. The prostitutes pay as much as 40%, plus room and board, to the owner of the brothel. All medical tests are also paid by the prostitutes themselves. They do not receive benefits packages, and if they test positive for HIV, they do not receive any type of support after their employment is terminated.[50]

The legalization of brothels in Nevada is accompanied by criminalization of prostitution activity outside of the brothels.

Prostitutes' advocacy groups often cite the Nevada model as an example of the problems, particularly the exploitation of prostitutes, associated with state-run brothels.

The Netherlands

The Netherlands has traditionally tolerated prostitution. Working as a prostitute is not a crime and brothels have been openly tolerated although not legalized. In the past, attempts to make them legal have failed on moral grounds. However, traffic in women, particularly from South America, has been recognized as a problem in the Netherlands. As Dutch prostitutes became more aware of their rights and began to insist on adequate working conditions, the attraction of immigrant women for brothel owners increased. Many of these women were illegally brought to the Netherlands, could not communicate with clients, were afraid to report violence to the police and were generally kept in exploitative or even slave-like conditions. In the late 1980s, the prohibition of brothels was increasingly questioned and licensing of prostitution businesses was given serious consideration. In 1988, increased penalties against traffickers were introduced by Parliament.[51]

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[50] Information on Nevada model was obtained from C. A. Campbell. "Prostitution, Aids, and Preventive Health Behavior", *Social Science Medicine*, 1991, Vol. 32 (12), 1367-1378.

[51] Information on conditions of immigrant prostitutes in the Netherlands was obtained from Pheterson, G., A (Ed.) *Vindication of the Rights of Whores*, Seattle: Seal Press, 1989

In 1997, the Dutch Government presented a proposal to legalize brothels. The Dutch State will no longer treat "organizing the prostitution of somebody else" as a crime when this is done with the consent of the prostitute. If she regards prostitution as the best option to earn a living, she shall have the same rights as any other worker. Any form of forced prostitution will remain in the penal code. Municipal services will be responsible for checking the conditions under which brothels are operated.

Australia

The situation in Australia is worth examining. Melbourne, Victoria and Sydney, New South Wales all have a large on-street and off-street prostitution problem. However, their approach has been quite different from what exists in Canada. In 1985, steps were taken by both the Labour Governments of the State of Victoria and the State of New South Wales to change the approach to brothels by taking the matter out of the state *Police Offences Act* and putting it in the *Town Planning Act*. The *Police Offences Act* basically criminalized the operation of a brothel in a fashion consistent with s. 210 of the Canadian *Criminal Code*.

In Australia, criminal law is made by the individual states. Thus, the approach taken by Australia cannot be applied directly to Canada as these states can directly authorize municipalities to grant approvals to operate a brothel.

There are minor differences in how the Governments of Victoria and New South Wales dealt with the matter. The *Town Planning Act (Brothels)*, as it was known in Victoria, required that a brothel owner obtain approval from the local town councils to operate a brothel. This state law explicitly noted that morality would *not* be a consideration in the granting of such approval, but rather that the location had to comply with a set of what are essentially explicit zoning regulations. For example, the Victoria law stipulated that no site could be located within 500 feet of a school or church.

The local councils were extremely annoyed by this move because it downloaded the problem to the municipal level, exposing the municipal politicians to public criticism. Brothel operators ended up taking some local councils to court to force approval. The operation of legal brothels did not remove the problem of public soliciting which continued in neighbourhoods such as St. Kilda, in Melbourne and the Rocks, in Sydney. Public soliciting remained an offence within the *Police Offences Act*.

In Victoria, another state law was adopted to deal with the welfare of prostitutes by protecting adolescents from being recruited or working as prostitutes.

The 1991 Australian Criminal Justice Commission report on prostitution, *Regulating Morality? An Inquiry into Prostitution in Queensland,* presented arguments on decriminalization. There were three principal concerns: the health risks associated with prostitution and related activities such as drug abuse; the involvement of organized crime; and the corruption associated with other crimes within the industry. The goals of these arguments were weighed heavily toward prevention strategies, the minimization of public nuisance, the protection of workers and clients from health risks, and the reduction of costs associated with administration and enforcement.

In Australia, arguments for total decriminalization were not considered on the grounds that the public would not accept this course of action. Partial decriminalization was presented as a middle of the road approach that would involve changes in laws related to street soliciting, prostitution activities involving children and the disadvantaged, and any prostitution activities involving coercion, intimidation, fraud, exploitation and offensive advertising.

A regulatory framework was proposed for individual sex workers operating from their home and any organization involving two to 10 persons, regardless of whether it operated as a brothel, escort agency, co-operative or any other form of organization that offered sexual services. Such an organization could not have an interest in or operate from more than one premise.

A Registration Board was proposed for the following purposes: to ensure there would be no criminal involvement; to maximize the safety and employment conditions of workers; and, to ensure workers were accessible to health and other social service providers. Establishments would be given a certificate of registration and this certificate would be renewed subject to an annual evaluation.

d) Views of the Working Group

As has been noted earlier, the Working Group recognizes that the current law regarding prostitution is inconsistent in that, despite all of the prohibitions surrounding the setting in which prostitution may occur, prostitution itself is legal.

Available data tends to demonstrate that indoor prostitution is less harmful physically than that which takes place on the street. The vast majority of crimes against prostitutes, including murders, are perpetrated against street prostitutes by customers and pimps, largely because of the anonymity, tension and high level of drug use that characterize street prostitution.

The enforcement of prostitution offences occurring in indoor venues is significantly lower compared to those occurring on the street. Enforcement operations targeting indoor venues usually are triggered by complaints related to the occurrence in these venues of serious forms of exploitation or activity such as drug trafficking or immigration offences. By limiting enforcement to the more visible forms of prostitution and the more egregious forms of indoor prostitution, some argue that the state tolerates a great deal of prostitution as it currently exists in Canada: i.e., the operation of escort services, massage parlors and other similar venues where prostitution-related activities may occur. In most jurisdictions, this has resulted in a two-tiered system of enforcement: more affluent buyers and sellers engage in prostitution-related activities with relative impunity while those who are poorer and less well organized are subject to arrest.

The Working Group recognizes that the reform of the bawdy-house provisions as was recommended by the Fraser Committee in 1985 could have some benefit both in terms of making the law consistent as well as in reducing certain problems associated with street prostitution - especially those of damage to neighbourhoods and violence against prostitutes. This could involve the selective decriminalization of certain offences, with regulatory power resting with interested municipalities.

It is important to note, however, that Canadian criminal law is made by Parliament for the entire country. Municipalities receive their authority from the provinces and not the federal government. Any attempt to allow selective, rather than Canada-wide decriminalization should be done on the same basis as s. 207 of the *Criminal Code*, which provides for a province to conduct and manage a lottery scheme notwithstanding the provisions relating to gaming and betting. The gaming and betting offences remain in place but they are decriminalized as the activities are lawful if the conditions contained in s. 207 are met.

Any such reforms would require interest not only from municipalities but from provinces and the federal government. It should be noted that municipal representatives participating in the consultation expressed very little interest in repeal of the bawdy-house offences of the *Criminal Code*. However, a significant faction of city councillors in Toronto favoured such repeal for the purpose of establishing a designated red-light zone. Those councillors, however, could not agree on the location within Toronto of such a zone. It should be noted that experiments with sanctioned red light districts, such as the one in the city of Boston in the 1970s, proved to be a failure. In that case, the area quickly became a magnet for criminal activity and the experiment was terminated.

The Working Group gave serious consideration to the various strategies of decriminalization and regulation because of the serious problems associated with street prostitution in Canada. However, given the lack of comprehensive evaluations of decriminalization and regulation models in other countries and the clearly mixed views of Canadians, the Working Group suggests that, if legal reforms are to be undertaken, they should only be done within the context of careful planning to avoid the potential disadvantages of decriminalization or regulation. Prominent among these disadvantages is the potential influx of prostitutes and clients if Canada becomes known for liberalized prostitution laws. The Working Group is also concerned that decriminalization or regulation would send a message of endorsement of prostitution when there is much evidence of the victimization of its participants, regardless of the legal model adopted.

It is the view of the Working Group that, despite the reluctance of many municipalities, there would be value in undertaking discussions with interested parties regarding regulation of certain prostitution-related activities. Many Canadians appear to be unaware of the inconsistencies of Canadian law, or the possible connection between the illegal status of bawdy-houses and the problems of street prostitution. Focused discussions on the potential use of regulatory schemes could assist municipalities in developing options to reduce the serious problems they face in ensuring the safety of their residents, including women involved in prostitution, while maintaining an acceptable environment in which businesses can operate and residents can live.

Recommendations:

> *That s. 213 of the* Criminal Code *not be amended for the purpose of decriminalizing street prostitution.*
>
> *That the bawdy-house provisions of the* Criminal Code*, which target indoor prostitution, not be totally repealed.*

That interested municipal and provincial governments undertake discussions with each other and with the federal government regarding the option of giving municipalities more regulatory authority in relation to bawdy-houses in order to address the problems posed by street prostitution, particularly the hazards posed to residents, the involvement of youth in prostitution and the dangers to prostitutes themselves. In particular, consideration could be given to the reform of s. 210 of the Criminal Code *to allow one or two prostitutes operating out of their own residence where municipalities believed that the hazards and dangers of street prostitution warranted such measures. Review of s. 213 would be required to ensure that this provision is consistent with any reform to s. 210.*

That any strategy for decriminalization of indoor prostitution be done on the basis of an amendment structured similarly to s. 207 of the Criminal Code, *that is, at the option of the government of a province, to allow for flexibility according to the local situation.*

PART IV - CONCLUSION

The Working Group consulted broadly in addressing its mandate - with justice officials most directly involved in responding to prostitution-related activities, with residents of neighbourhoods affected by these activities, with community organizations and prostitutes themselves. Relevant research was reviewed and original research undertaken to explore three general areas of concern: street prostitution, youth involved in prostitution and violence associated with the sex trade.

These consultations and research have revealed significant consensus regarding an appropriate response to youth involved in prostitution. Issues surrounding street prostitution, however, elicited significantly divergent views.

The Working Group has concluded that the response to youth involved in prostitution must include both social intervention strategies, to assist and protect youth, and more effective measures to apprehend and prosecute those who sexually exploit youth. While some recommendations are made to amend the current provisions of the *Criminal Code* respecting the sentencing of customers and pimps, emphasis is placed on enhancing the enforceability of the existing law. In its recommendations, the Working Group reflects the unanimous support of consultation participants for an interagency, multidisciplinary approach to the provision of support services to assist young people to leave the streets.

The current legal framework established to address street prostitution reflects the ambivalence of the Canadian public toward this activity. While prostitution *per se* is not illegal, many activities involved in engaging in prostitution are proscribed. Despite a series of *Criminal Code* amendments made over the past 25 years, the Working Group received compelling evidence that the existing law is not working. Criminal justice professionals and citizens in affected neighbourhoods report that the harm associated with street prostitution as well as violence against prostitutes have persisted.

The Working Group heard varying views regarding an appropriate response to street prostitution. Some respondents felt that current legislation should be rigorously enforced or enhanced, while others argued for decriminalization or regulation.

Although there was consensus that some control measures are necessary to address the nuisance and harm associated with street prostitution, there was little agreement regarding the form that such regulatory mechanisms should take. Given the divergent views of respondents and the lack of conclusive research on effective alternatives, the Working Group is unable to recommend the decriminalization of the communication provision of the *Criminal Code* (s. 213) or repeal of the bawdy-house provisions (ss. 210 and 211). Acknowledging that police and affected neighbourhoods continue to search for solutions to the problems associated with street prostitution, the Working Group would encourage discussion between different levels of government regarding limited decriminalization and regulation of bawdy-houses.

The Working Group was made aware of many innovative responses by communities, in partnership with police agencies, to address the problems of street prostitution. Although early results of many of these measures are promising, the Working Group believes further research on the impact of these strategies is required before definitive conclusions can be drawn.

LIST OF RECOMMENDATIONS

YOUTH INVOLVED IN PROSTITUTION

1. That ss. 212(2) of the *Criminal Code* be amended to provide that all procuring offences listed in ss. 212(1) committed in respect of persons under the age of 18 be punishable by a maximum term of 14 years imprisonment.

2. That the Uniform Crime Reporting Survey provide data with respect to the offences enumerated in s. 212 of the *Criminal Code* so that the number and types of these offences committed in relation to persons under 18 years of age may be ascertained.

3. That, in view of the lack of consensus concerning mandatory minimum sentences in relation to the procuring-related offences involving youth, the Working Group makes no recommendation.

4. That provinces and territories adopt appropriate measures to increase the awareness of justice personnel in relation to the dynamics of prostitution, in particular, the dynamics of youth involved in prostitution.

5. That ss. 212(4) of the *Criminal Code* not be amended at this time to effect increased sentences for customers of youth involved in prostitution.

6. As creating new offences in respect to children under the age of 14 raises issues in connection with age of consent to sex in other sections of the *Criminal Code*, that the issue of increased penalties for customers and pimps of youth under the age of 14 await the federal discussion paper on sexual offences against children, the first phase of a project on children as victims of crime.

7. That ss. 212(4) of the *Criminal Code* be amended to read:

   212(4) Every person who, in any place, obtains or **communicates with any person for the purpose of obtaining**, for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; and that ss. 212(5) be repealed.

8. That specialized witness protection strategies be developed by provincial and territorial Attorneys General and/or Ministers of Justice for youth involved in prostitution who are prepared to testify against pimps and customers under the prostitution-related sections of the *Criminal Code*.

9. That no additional legislation be introduced at this time to facilitate receiving the evidence of complainants or witnesses under the age of 18 in proceedings related to prostitution offences.

10. That youth involved in s. 213 related offences be dealt with by child welfare and criminal justice systems as persons in need of assistance, as distinct from being treated as offenders.

11. That the police continue to exercise their discretion, whenever possible, not to charge youth involved in s. 213 offences.

12. That provincial guidelines be developed to educate and assist Crown prosecutors in the exercise of their discretion with respect to youth involved in prostitution; that such guidelines encourage Crown counsel to treat youth involved in prostitution as persons in need of assistance.

13. That provincial/territorial jurisdictions review, and amend if necessary, their respective child welfare legislation to make prostitution-related activity a basis for apprehension of youth, but that apprehended youth not be detained against their will, except in specific, statutorily-defined circumstances relating to the health or safety of the youth or other persons.

14. That the provinces and territories, with the assistance of the federal government, improve the level of services which deal specifically with youth involved in prostitution by developing interdisciplinary protocols involving participation of representatives from child welfare, the police and the Crown;
    - that such protocols be informed by the view that youth involved in prostitution are often victimized and accordingly should include guidelines for the appropriate handling of youth involved in prostitution by social service agencies, police and the Crown;
    - that such protocols integrate practices and policies under child welfare and criminal legislation in order to address in a comprehensive and coherent manner the specific needs of these youth which may be contributing to their involvement in prostitution, e.g., provision of social assistance, appropriate counselling, safe housing, etc., before professionals dealing with these youth resort to criminal justice intervention;
    - that such protocols make criminal justice intervention a last resort for dealing with youth involved in prostitution.

15. That provinces and territories develop special "alternative measures" programs designed exclusively for youth involved in prostitution to be implemented under s. 4 of the *Young Offenders Act*, preferably as part of pre-charge diversion of these youth from the criminal justice system; such programs should specifically address the special needs of these youth for counselling, life skills, safe housing, job training and drug rehabilitation and accommodate youth with aboriginal or ethno-cultural minority backgrounds.

16. That the provinces and territories, with the assistance of the federal government, improve the level of services that deal specifically with youth involved in prostitution or at risk of such involvement, including those youth who, for reasons of culture or other factors, have difficulty accessing current services. This should be addressed by developing:

a range of programs to deal specifically with youth involved in prostitution, or at risk of such involvement, from prevention and awareness, to harm reduction and exit programs, including:

- education programs about the realities of prostitution for youth and the general public;
- specialized outreach programs that employ workers knowledgeable about the sex trade;
- drug and alcohol abuse programs;
- counselling for physical and sexual abuse, both recent and historical;
- treatment and counselling for sexually transmitted diseases;
- housing; and,
- training and employment programs to assist youth wishing to leave the sex trade;

residential programs for youth involved in prostitution, which could be accessed voluntarily by them and which would specifically address needs for counselling, life skills, safe housing, job training and drug rehabilitation;

best-practice models for services to youth involved in prostitution:

> the federal government act as a clearinghouse for the evaluation of programs that have been successful in providing effective services in the provinces and territories to youth involved in prostitution, with a view to dissemination of information to all provinces and territories concerning best practices, to deal with the problem of youth involved in prostitution and permanent implementation of these practices in every province and territory.

STREET PROSTITUTION

1. The Working Group could not arrive at a consensus regarding the reclassification of the offence under s. 213 as a hybrid offence.

2. The Working Group could not arrive at a consensus regarding an amendment to the *Identification of Criminals Act* to allow for fingerprinting and photographing of those charged under s. 213 of the *Criminal Code*.

3. That specialized witness protection strategies be developed by provincial and territorial Attorneys General for adults and youth involved in prostitution who are prepared to testify against pimps and customers under the prostitution-related sections of the *Criminal Code*.

4. That ss. 486(2.1) and s. 715.1 of the *Criminal Code* be amended in order to allow the use of screens, out of court testimony and videotaped evidence to facilitate the testimony of adult prostitutes where they may be intimidated when testifying against persons accused of prostitution-related offences.

5. That s. 183 of the *Criminal Code* be amended to include ss. 212(2), ss. 212(2.1) and ss. 212(4) of the *Criminal Code* to allow for judicially authorized interceptions of private communications in respect of these offences.

6. That provinces, territories and the Canadian Association of Chiefs of Police consider the advantages of creating High Risk Homicide Registries in their respective jurisdictions, and of encouraging registration by members of all groups identified as being at high risk of homicide, in particular female and male street prostitutes.

7. That there be no amendment to the *Criminal Code* to establish a minimum sentence or increase the maximum sentence for persons convicted under s. 213 of the *Criminal Code*.

8. That there be no amendment of the *Criminal Code* to increase the maximum sentence for persons convicted under ss. 212(1).

9. That the provinces and territories, with the assistance of the federal government, review their support for social interventions with a view to ensuring that there are appropriate, accessible services for adults involved in prostitution. These services should include safe accommodation, crisis intervention and counselling for those who desire assistance in leaving the sex trade. Services provided should be "user-friendly" to assist adults engaged in prostitution to obtain treatment and counselling particularly with respect to sexually-transmitted diseases and alcohol and drug abuse.

10. That, in view of the lack of consensus on motor vehicle strategies such as license suspension, driving prohibition, the impounding of motor vehicles, their seizure or forfeiture, the Working Group makes no recommendation.

11. That municipalities consider the use of their present powers to address street prostitution by controlling motor vehicle traffic in specified areas, bearing in mind that this may lead to problems associated with displacement of strolls.

12. That strategies such as "shame the johns campaigns" be kept under review in light of the mixed comments received on the effectiveness of these approaches.

13. That communities determine the appropriateness of specialized diversion programs (e.g., "john schools") for their own communities, in light of local issues such as the level of street prostitution, support by the community for the program and funding options. Communities are urged to recognize the importance of specialized exit programs for female, male and transgender prostitutes who wish to leave the sex trade as an integral component of the community's attack on street prostitution.

14. That the federal and provincial governments support an independent evaluation of existing john schools in Canada to determine the efficacy of such programming in reducing street prostitution.

15. That civil injunctions not be resorted to in order to reduce the nuisance associated with street prostitution. Such injunctions are likely to merely displace the targeted street prostitution to another location which may prove equally problematic to residents or may increase the danger to prostitutes. Communities are reminded of the availability of s. 213 of the Criminal Code for the purpose of reducing the harms to neighbourhoods caused by street prostitution.

16. That community conflict resolution be considered by municipalities to address specific problems posed to business or residential areas by street prostitution. Such a measure may be particularly effective where existing support services are staffed by outreach workers who have established credibility with local prostitutes and police and who are able to assist in developing joint solutions to the problems caused by street prostitution in neighbourhoods.

17. That s. 213 of the *Criminal Code* not be amended for the purpose of decriminalizing street prostitution.

18. That the bawdy-house provisions of the *Criminal Code*, which target indoor prostitution, not be totally repealed.

19. That interested municipal and provincial governments undertake discussions with each other and with the federal government regarding the option of giving municipalities more regulatory authority in relation to bawdy-houses in order to address the problems posed by street prostitution, particularly the hazards posed to residents, the involvement of youth in prostitution and the dangers to prostitutes themselves. In particular, consideration could be given to the reform of s. 210 of the *Criminal Code* to allow one or two prostitutes operating out of their own residence where municipalities believed that the hazards and dangers of street prostitution warranted such measures. Review of

s. 213 would be required to ensure that this provision is consistent with any reform to s. 210.

20. That any strategy for decriminalization of indoor prostitution be done on the basis of an amendment structured similarly to s. 207 of the *Criminal Code*, that is, at the option of the government of a province, to allow for flexibility according to the local situation.

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